

EXHIBIT F

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Docket No. 3:16-md-2738-FLW-LHG

IN RE:

JOHNSON & JOHNSON TALCUM
POWDER PRODUCTS MARKETING,
SALES PRACTICES AND PRODUCTS
LIABILITY LITIGATION

MOTION TO COMPEL
DEPOSITION TESTIMONY
OF PAUL HESS

* * * * *
MONDAY, AUGUST 5, 2024

* * * * *

MONTGOMERY, McCRACKEN, WALKER & RHOADS, LLP
BEFORE: SPECIAL MASTER JOEL SCHNEIDER, USMJ, RETIRED
1735 MARKET STREET
21st FLOOR
PHILADELPHIA, PENNSYLVANIA 19103-7505
856-488-7797
FAX - 215-772-7620
jschneider@mmwr.com

MASTROIANNI & FORMAROLI, INC.
Certified Court Reporting & Videoconferencing
P. O. Box 368
Haddon Heights, New Jersey 08035
856-546-1100

August 5, 2024

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<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 Transcript of proceedings in the</p> <p>9 above matter taken stenographically by</p> <p>10 Theresa Mastroianni Kugler, Certified Court Reporter,</p> <p>11 license number 30X100085700, Notary Public of the</p> <p>12 State of New Jersey and the Commonwealth of</p> <p>13 Pennsylvania, VIA ZOOM REMOTE VIDEOCONFERENCE,</p> <p>14 commencing at 3:01 PM.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 APPEARANCES:</p> <p>2</p> <p>3 ASHCRAFT & GEREL, LLP</p> <p>4 BY: MICHELLE A. PARFITT, ESQUIRE</p> <p>5 1825 K STREET, NW</p> <p>6 WASHINGTON, DC 2006</p> <p>7 800-674-9725</p> <p>8 202-759-7648</p> <p>9 mparfitt@ashcraftlaw.com</p> <p>10 ATTORNEYS FOR THE PLAINTIFFS</p> <p>11</p> <p>12 BEASLEY ALLEN LAW FIRM</p> <p>13 BY: LEIGH O'DELL, ESQUIRE</p> <p>14 218 COMMERCE STREET</p> <p>15 P.O. BOX 4160</p> <p>16 MONTGOMERY, ALABAMA 36104</p> <p>17 800-898-2034</p> <p>18 FAX - 334-954-7555</p> <p>19 leigh.odell@beasleyallen.com</p> <p>20 ATTORNEYS FOR THE PLAINTIFFS</p> <p>21</p> <p>22 COHEN, PLACITELLA & ROTH, PC</p> <p>23 BY: CHRISTOPHER M. PLACITELLA, ESQUIRE</p> <p>24 127 MAPLE AVENUE</p> <p>25 RED BANK, NEW JERSEY 07701</p> <p>215-567-3500</p> <p>732-747-9003</p> <p>FAX - 215-567-6019</p> <p>cplacitella@cpirlaw.com</p> <p>ATTORNEYS FOR THE PLAINTIFFS</p> <p>21</p> <p>22 BURNS, CHAREST, LLP</p> <p>23 BY: MATT STRAUSSER, ESQUIRE</p> <p>24 365 CANAL STREET</p> <p>25 SUITE 1170</p> <p>NEW ORLEANS, LOUISIANA 70130</p> <p>504-799-2845</p> <p>FAX - 504-881-1765</p> <p>aklevom@burnscharest.com</p> <p>ATTORNEYS FOR THE PLAINTIFFS</p>
Page 4	Page 5
<p>1</p> <p>2 FAEGRE, DRINKER, BIDDLE & REATH, LLP</p> <p>3 BY: SUSAN M. SHARKO, ESQUIRE</p> <p>4 600 CAMPUS</p> <p>5 FLORHAM PARK, NEW JERSEY 07932</p> <p>6 DIRECT - 973-549-7350</p> <p>7 FAX - 973-360-9831</p> <p>8 susan.sharko@faegredrinker.com</p> <p>9 ATTORNEYS FOR THE DEFENDANT,</p> <p>10 JOHNSON & JOHNSON and JOHNSON & JOHNSON</p> <p>11 CONSUMER COMPANIES, INC.,</p> <p>12 now known as JOHNSON & JOHNSON CONSUMER, INC.</p> <p>13</p> <p>14 KING & SPALDING, LLP</p> <p>15 BY: MATTHEW BUSH, ESQUIRE</p> <p>16 - and -</p> <p>17 BY: KRISTEN FOURNIER, ESQUIRE</p> <p>18 1185 AVENUE OF THE AMERICAS</p> <p>19 34TH FLOOR</p> <p>20 NEW YORK, NEW YORK 10036</p> <p>21 212-790-5356</p> <p>22 mbush@kslaw.com</p> <p>23 ATTORNEYS FOR THE DEFENDANTS</p> <p>24</p> <p>25 BOVIS, KYLE, BURCH & MEDLIN, LLC</p> <p>BY: ERIC A. LUDWIG, ESQUIRE</p> <p>200 ASHFORD CENTER NORTH</p> <p>SUITE 500</p> <p>ATLANTA, GEORGIA 30338-2688</p> <p>678-338-3925</p> <p>eludwig@boviskyle.com</p> <p>ATTORNEYS FOR PAUL HESS</p>	<p>1 SPECIAL MASTER SCHNEIDER: This is</p> <p>2 Special Master Judge Schneider. We're here for oral</p> <p>3 argument on the motion to compel deposition testimony</p> <p>4 of Paul Hess and for sanctions. Docket number 32993.</p> <p>5 Just to let the parties know at the</p> <p>6 outset, I'm going to reserve decision on today's</p> <p>7 motion, but you will get a ruling promptly.</p> <p>8 So why don't we start with the entries</p> <p>9 of appearance for the Plaintiffs.</p> <p>10 MS. O'DELL: Leigh O'Dell from Beasley</p> <p>11 Allen on behalf of the Plaintiffs' Steering</p> <p>12 Committee.</p> <p>13 MR. PLACITELLA: Chris Placitella. I</p> <p>14 didn't have it on my schedule, your Honor, and you</p> <p>15 don't want to see my attire.</p> <p>16 SPECIAL MASTER SCHNEIDER: All right.</p> <p>17 If anyone else is going to talk for the</p> <p>18 Plaintiffs, just introduce yourself so the court</p> <p>19 reporter can take down your name.</p> <p>20 And for the Defendants?</p> <p>21 MR. BUSH: Matthew Bush from King &</p> <p>22 Spalding for the Defendants. And with me are Susan</p> <p>23 Sharko and Kristen Fournier.</p> <p>24 SPECIAL MASTER SCHNEIDER: Okay. So I</p> <p>25 think that this argument is a little bit unusual, a</p>

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<p style="text-align: right;">Page 6</p> <p>1 little bit different than what we usually do, 2 because, as I see it, the argument is to interpret 3 what the Special Master intended in the June order 4 and in the ruling made on the record on July 10 at 5 Mr. Hess' deposition. And I don't think anybody 6 knows what I intended better than me. 7 So here is how I would like to proceed 8 today. I have a couple of just real basic questions, 9 and then I went through each of the objections one by 10 one and I just have some questions about them. And I 11 have a feeling we'll get to all of your arguments 12 when we go through the examples. But as usual, I 13 don't want to cut anybody short, if there is any 14 argument you want to make or anything you want to 15 say, you'll have all the time in the world to say it. 16 Let me start with, am I correct that 17 when you deposed Mr. Hess, you asked him a fair 18 number of questions about these photographs or you 19 call them photomicrographs, is that what they were? 20 MR. BUSH: Yeah, and I think that was 21 directed to the defense, your Honor. 22 SPECIAL MASTER SCHNEIDER: It was. 23 MR. BUSH: Yes, your Honor. We asked 24 questions about the photomicrographs. And as a -- 25 well, two things as a housekeeping measure. The</p>	<p style="text-align: right;">Page 7</p> <p>1 photomicrographs and photographs are really the same 2 thing, they're just micro, because they're images of 3 such small particles so we can call them either one. 4 And just the other small housekeeping, 5 I think Mr. Ludwig should probably enter his 6 appearance for Mr. Hess if he's intending to present 7 argument. We went Plaintiffs and Defendants, which 8 is obviously normal, but this is -- we have a third 9 party here. 10 MR. LUDWIG: Thank you, Mr. Bush. 11 I didn't want to interrupt the Judge, 12 but I'm here on behalf of the deponent. I'm neither 13 Plaintiff nor Defendant. 14 SPECIAL MASTER SCHNEIDER: So getting 15 back to my question, are these photographs of what 16 the microscopist sees through the microscope? 17 MR. BUSH: Well, I think the simple 18 answer to that is yes, your Honor. But what is -- 19 what the screen looks like -- I mean what -- yes, 20 your Honor, but they're claiming that they're seeing 21 something different that's not what they're seeing in 22 the images that they produced. 23 So, yes, you're looking down the 24 microscope and you're producing an image and these 25 are the particles that you're looking at, but part of</p>
<p style="text-align: right;">Page 8</p> <p>1 the issue is that there has been this claim that when 2 you're looking down the microscope, you're seeing 3 these colors that aren't appearing in the images that 4 are produced to us. 5 SPECIAL MASTER SCHNEIDER: Here is what 6 I'm confused about. You've made the argument that 7 there is no substitute for looking down the 8 microscope. And the person who looks down the 9 microscope, that's why we have to depose him and 10 that's why you wanted the inspection, because, as I 11 read it, the argument was the photographs would be 12 ineffective in cross-examining Longo. 13 But now you're using the photographs in 14 your examination of Hess. So it seems inconsistent 15 to me. On the one hand you're saying you have to 16 look down the microscope, there is no reasonable 17 alternative. On the other hand, you're asking Hess 18 about these photographs that you're saying are 19 critical to getting to the bottom of the methodology. 20 MR. BUSH: Yes, your Honor. I have a 21 couple responses to that. 22 First of all, the photographs are what 23 we have. If they're going to agree that the 24 photographs do not accurately document the backup 25 data that allows somebody to determine whether this</p>	<p style="text-align: right;">Page 9</p> <p>1 is talc or chrysotile, then this entire opinion 2 should be thrown out. This is what they produced and 3 this is what we have to go on. 4 Secondly, we're looking at the 5 photographs. We see yellow. Our experts are saying 6 yellow. We had this whole discussion at issue about 7 this with the last round of arguments. 8 Their excuse for why, even though we're 9 seeing yellow, something else is happening is, we 10 have to look down the microscope. That's their 11 explanation and their justification for how everyone 12 sees a yellow particle, and they're calling it 13 purple. 14 So what we want to do is show the 15 images at issue and say what is going on here. And 16 there is a lot of questions about that. What color 17 are you calling it? What color is it? What's your 18 basis for calling it that color? That is the entire 19 basis for that analysis. And either he can say -- he 20 can have an answer or he can say I can't answer that 21 because I need to look down the microscope too. And 22 either way, that's really critical information for us 23 as the person who looked down the microscope. And I 24 have further responses, but I see -- it looked like 25 you had another question.</p>

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<p style="text-align: right;">Page 10</p> <p>1 SPECIAL MASTER SCHNEIDER: You could 2 read my mind, Mr. Bush. 3 I have to tell you, I don't recall ever 4 hearing an argument from the Plaintiffs that the 5 photographs were not a substitute for looking down 6 the microscope. If they made that argument, I missed 7 it. That's what I'm trying to get at. You're saying 8 you have to look down the microscope, but yet you're 9 relying on the pictures to get Hess to answer 10 questions about color. It seems inconsistent to me. 11 MR. BUSH: No, your Honor. It is 12 Doctor -- the person who is saying you have to look 13 down the microscope live is Dr. Longo. He's giving 14 us a picture that's yellow. And we're saying, Dr. 15 Longo, you're calling this purple, how are you doing 16 that? And he said -- 17 SPECIAL MASTER SCHNEIDER: Mr. Bush, I 18 don't mean to interrupt you. I apologize. But it 19 wasn't -- if I recall correctly, it wasn't Dr. Longo 20 who said I can't look at the photographs, I have to 21 look at the microscope, it was the Defendants who 22 said that. 23 MR. BUSH: Not at all, your Honor. 24 This was exactly what came up at the Clarke hearing 25 which was the New Jersey State Court hearing which</p>	<p style="text-align: right;">Page 11</p> <p>1 was Rule 104 there. It's the equivalent of Rule 702. 2 We asked him a number of questions. It also came up 3 at -- I mean we have it all in the prior briefing 4 from the last time we argued. This came up a lot at 5 the Valadez deposition and other depositions. And 6 this is the sequence of how the questions are asked: 7 What is this particle and how are you saying that 8 that's talc and not chrysotile? 9 And he says, I would need to look down 10 the microscope to answer that question. 11 Then we say, and this is a really 12 important one that we've highlighted a lot: MAS is 13 relying on this edge effect. That's what they're 14 claiming. These colors that they claim to see on the 15 edges of the particles is what they're saying is the 16 key differentiating feature between chrysotile and 17 talc. 18 And so we say, hey, Dr. Longo, isn't 19 that edge effect also on all the talc particles, 20 meaning it's not a differentiating feature, and 21 doesn't that make your entire analysis wrong? 22 And he says: I would have to look down 23 the microscope. That's how I would justify my 24 answer. And this was over and over again. And we 25 had that -- those bullets in this briefing, it was</p>
<p style="text-align: right;">Page 12</p> <p>1 probably 15 times when we asked a question, Dr. Longo 2 said, I would have to be looking down the microscope. 3 And that -- 4 SPECIAL MASTER SCHNEIDER: I'm sorry. 5 Go ahead. Finish. 6 MR. BUSH: That necessarily punts the 7 issues to Mr. Hess on all the critical questions, 8 because Mr. Hess is the one looking down the 9 microscope. 10 SPECIAL MASTER SCHNEIDER: I want to 11 hear from Ms. O'Dell, but I think you left out one 12 step. 13 You said you're representing that Dr. 14 Longo said you have to look down the microscope. I 15 haven't heard or seen in the record where someone 16 said Dr. Longo, here is a photograph of what's down 17 the microscope, can you answer the question based on 18 the photograph? I haven't heard, unless I'm missing 19 it, him say I have to look down the microscope. The 20 photograph is not a good reference. 21 MR. BUSH: Your Honor, I think Ms. 22 Fournier is going to have a heart attack over this 23 question. This happened -- this was every single 24 time. And I want to give you maybe three examples of 25 it.</p>	<p style="text-align: right;">Page 13</p> <p>1 One is in the first round of briefing, 2 the Plaintiffs complained, hey, you haven't 3 associated the questions being asked with the images 4 being -- that you're looking at. And so we submitted 5 a chart that associated every image he was being 6 shown with every question so there could be no 7 dispute about what he was being shown and what he was 8 being tested. 9 MS. FOURNIER: I'm so sorry. Just to 10 make sure it's abundantly clear, your Honor. As the 11 questions are being asked, visual on the video, if 12 you happen to watch it instead of reading, an image 13 is up on the screen. The questions almost -- I mean 14 more than 50 percent of the time, there is an image 15 showing that's driving the questions that are being 16 asked. These are not questions in a vacuum about 17 particles, they're about the particles in the report 18 that all have pictures produced that correspond to 19 the particles. 20 MR. BUSH: And the question being 21 asked, we had two examples that we highlighted as 22 like the exemplar of all the sort of bullets, there 23 were 10, 15 examples of this. And we said, your 24 Honor, we want to draw your attention to two 25 examples.</p>

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<p style="text-align: right;">Page 14</p> <p>1 One of them was the question, what is 2 that particle? He was being shown an image and the 3 question is: What is that particle? 4 And he said, I can't answer that 5 without looking down the microscope. And just so 6 there would be absolutely no dispute about this, we 7 launched a video of this with the court and you can 8 watch Dr. Longo not only on the screen, he has his 9 report in front of him and he's flipping through the 10 pictures and you can see him unable to answer the 11 question after an inordinate amount of time of 12 looking at the images. 13 And the second example that we've 14 highlighted is saying: Dr. Longo, isn't this edge 15 effect on all the talc particles? And as Ms. 16 Fournier is explaining, we have an image of those 17 talc particles with this edge effect and we're 18 saying: Isn't this -- doesn't this demonstrate your, 19 quote, entire analysis is wrong? 20 And his answer is: I'm not wrong, I 21 would need to be looking down the microscope. 22 So all these questions are us asking 23 him questions about a particular particle or 24 particles and him saying I would need to look down 25 the microscope to answer the questions. And in</p>	<p style="text-align: right;">Page 15</p> <p>1 particular, to justify why his entire analysis is not 2 wrong he said he had to look down the microscope for 3 that. 4 And this has been the examples we've 5 used in practically every brief on this issue. 6 SPECIAL MASTER SCHNEIDER: I have to 7 assume, I don't know this for a fact, that you filed 8 a Daubert motion to exclude this new opinion from Dr. 9 Longo, correct? 10 MR. BUSH: Yes, we have, your Honor. 11 SPECIAL MASTER SCHNEIDER: Did you 12 raise an argument that his testimony was incomplete 13 because he wouldn't answer these questions? 14 MR. BUSH: We said two things, your 15 Honor. We said, one, the testing is entirely 16 incapable of being tested or verified or reproduced 17 because the reason that he is saying, the way he says 18 he justifies whether the particles are talc or 19 chrysotile, are only when he looks live down the 20 microscope which we're not able to do. 21 And we said, when we tried to talk to 22 the person who actually looked down the microscope, 23 this was obstructed by all these questions not to 24 answer, and we gave a lot of the examples and 25 referenced the motion that we're here at issue</p>
<p style="text-align: right;">Page 16</p> <p>1 arguing. 2 So we argued both that his inability to 3 identify particles from the micrographs were a reason 4 to exclude his opinion. And there is case law about 5 this, about an inability to document, if you're not 6 documenting your work enough to be verified, that 7 that could be excluded. 8 And we argued the fact that we weren't 9 able to adequately depose the expert who is actually 10 doing the analysis is another reason to exclude him. 11 And that was based on many decisions but in a large 12 part on the Zantac decision, which found that a 13 factor to exclude the expert there was that there was 14 too much reliance on the analysis -- on the analyst, 15 the underlying analyst who wasn't a testifying 16 expert. 17 And here, we're even worse than that 18 because we weren't able -- because when we tried to 19 talk to the underlying analyst, we were obstructed by 20 a barrage of instructions not to answer. 21 SPECIAL MASTER SCHNEIDER: I saw in 22 your papers that apparently you were not permitted to 23 file a reply brief in support of your Daubert 24 motions, am I right? 25 MR. BUSH: The current order, the order</p>	<p style="text-align: right;">Page 17</p> <p>1 as it stands now says no reply briefs for Daubert 2 motions, that's correct. 3 SPECIAL MASTER SCHNEIDER: So what did 4 you intend to do with Hess' deposition testimony? 5 MR. BUSH: We intend -- your Honor, I'm 6 sorry, I don't mean to be frustrated. 7 We have asked for this issue to be 8 accelerated at every step and have constantly said 9 that a problem with this is that there is a Rule 702 10 deadline coming up. 11 And if you recall, your Honor, we 12 actually had to go to you about just scheduling the 13 deposition because we didn't think that the 14 scheduling of the deposition was happening fast 15 enough. And you were saying, well, can't you just 16 all work this out among yourselves, which I 17 completely agree should be the way to handle it, but 18 we've been saying at every step that this is critical 19 and must happen now before the Rule 702 motion. We 20 took the deposition before the Rule 702 motion. So 21 what my expectation was, was we were going to take 22 that testimony and put it in the Rule 702 motion. 23 Instead, what we did was we took all these 24 instructions not to answer and put it in the Rule 702 25 motion because it was all we had left to do.</p>

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<p style="text-align: right;">Page 18</p> <p>1 The full expectation was that we were 2 going to be able to use this in the motion. And now 3 we're hamstrung and I think we have to see what 4 happens from your Honor's ruling, but we're going to 5 have to try to figure out a way to get this before 6 the court. But at minimum, it's not the way we 7 wanted to, which was in the initial motion. 8 And to have some sort of supplement at 9 the end is just not an adequate substitute, if we're 10 even permitted to do that, which we don't know. 11 SPECIAL MASTER SCHNEIDER: So if the 12 trial judge agrees with you that Longo's testimony in 13 combination with the non-responsiveness of Hess is 14 critical to satisfying the Daubert standard, you'll 15 be successful in your request to strike Longo, right? 16 MR. BUSH: I mean yes, if the Court 17 agrees with us. But what we -- we didn't want him 18 not to answer the questions. 19 Another way we would be successful is 20 if he says yeah, the edge effect that I'm relying on 21 is on all these other particles, and so there is no 22 way to tell the difference between talc and 23 chrysotile. That would get us a win, too. Maybe he 24 gives that answer, maybe he doesn't, but we didn't 25 take the depo for him to not be able to answer the</p>	<p style="text-align: right;">Page 19</p> <p>1 questions. We want answers to these questions. And 2 it was the very basis -- I mean I don't -- I hear 3 what you're saying, your Honor, as we're arguing on 4 what your intent was, but we highlighted in the 5 initial motion that the reason we needed a deposition 6 of Mr. Hess is because Longo is not giving us 7 answers. 8 And I just want to repeat this example 9 again because I think it's so critical, that we asked 10 Dr. Longo: Isn't your entire analysis wrong because 11 you're not actually seeing a differentiating factor 12 for what you're saying is differentiating? And he 13 says, it's not wrong, I would have to look down the 14 microscope. 15 And what your Honor's opinion says is 16 that there were a lot of missing answers in Dr. 17 Longo's testimony based on this 18 need-to-look-down-the-microscope testimony. And that 19 was the one we highlighted the most. 20 So when we asked the exact same 21 questions to Mr. Hess, he was instructed not to 22 answer. He was instructed not to answer: Isn't the 23 edge effect on these other talc particles? 24 If Dr. Longo says you have to look down 25 the microscope and he never did, and we asked the guy</p>
<p style="text-align: right;">Page 20</p> <p>1 who looked down the microscope, and he's given an 2 instruction not to answer, we can't get this answer 3 from anybody. Mr. Hess is the key person here. He's 4 the one making all the decisions. He's the one who 5 is actually the expert here. There is almost nothing 6 that's left for Dr. Longo to do. 7 This is just -- let's just be clear. 8 Mr. Hess looks down the microscope. Mr. Hess picks 9 particles. He decides which ones are chrysotile and 10 which ones are talc. He does it based on assigning a 11 color to those particles and he's the one who takes 12 the images that are produced to us to look at it. 13 That leaves almost nothing for Dr. Longo to do. And 14 Plaintiffs can't say, oh, no, no, he is looking at 15 the images and independently verifying what Mr. Hess 16 is doing. Because when we asked Dr. Longo about the 17 images, he says, I would need to look down the 18 microscope, which he never did. So Mr. Hess is the 19 one who is the expert here which is why all the 20 briefing and all the orders called him an expert 21 multiple times. 22 And so we're getting a little ahead of 23 ourselves with this idea that we can't ask him 24 questions as an expert, whatever that means. It just 25 doesn't make sense because he's the expert that</p>	<p style="text-align: right;">Page 21</p> <p>1 everything rests on, which is what your order says, 2 your Honor, that he's the expert upon which Dr. Longo 3 will rely. 4 SPECIAL MASTER SCHNEIDER: One more 5 second, Ms. O'Dell. I still want to get to you. 6 I'm getting a little ahead of myself. 7 But didn't the order and the ruling in 8 July at the deposition say that Hess could testify 9 about his firsthand knowledge and his personal 10 observation and he wasn't there to compare one test 11 to another or talk about tests that weren't at issue 12 with regard to the new method that Longo used, the 20 13 or 23 tests? 14 So if the question is, Mr. Hess, when 15 you looked down the microscope, what color did you 16 see, he can answer that question, of course. But 17 weren't there questions of the ilk that, well, how 18 come you see this color now and when you did these 19 tests in 2019, you didn't see the color? That wasn't 20 the purpose of Hess' deposition. 21 MR. BUSH: Your Honor, there is a lot 22 there. 23 First of all, I would say 98 or 99 24 percent of the questions fell in the first category. 25 The question of what color are you seeing was given</p>

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<p style="text-align: right;">Page 22</p> <p>1 instructions not to answer. The question: Isn't 2 that light bulb adding a darker orange to your 3 testing, was an instruction not to answer. There 4 were just a multitude of questions not to answer all 5 about just the very images and testing that are 6 indisputably at issue in this MDL. 7 SPECIAL MASTER SCHNEIDER: That wasn't 8 the question about -- I recall the question about the 9 lighting that you mentioned, Mr. Bush, and it is 10 absolutely appropriate to ask Mr. Hess, which I don't 11 think was asked, what are the illumination settings 12 on the microscope when you took the test. It's 13 appropriate to ask him, did you set the illumination 14 setting at the maximum level. That is a factual 15 question. That is based on his personal knowledge. 16 But the way you phrased the question, you were asking 17 him an opinion to compare one thing to the other and 18 that's what I said was off limits. 19 MR. BUSH: Well, your Honor, the 20 question -- how else are we supposed to probe the 21 veracity and accuracy of his statements? So we asked 22 them, are you really setting it at the highest level, 23 the question was asked. And then we want to probe 24 whether that's right. 25 SPECIAL MASTER SCHNEIDER: Mr. Bush,</p>	<p style="text-align: right;">Page 23</p> <p>1 you did not ask him that question. 2 MR. BUSH: Your Honor, we -- 3 SPECIAL MASTER SCHNEIDER: I'm sorry. 4 I apologize. 5 At least in the snippets that I read, 6 which were the objections. Maybe at some other 7 portion. 8 MR. BUSH: Right. It came up before, 9 but we don't have to just take his word for it. We 10 can't just say, Mr. Hess, explain to us everything 11 you're doing wrong. And he says: I'm doing nothing 12 wrong. We're like oh, that's his testimony, he 13 testified he's doing nothing wrong. Well, you know 14 what, Defendants, what's your problem? 15 We have an entitlement to probe him on 16 the accuracy of his testimony. And if he's going to 17 say I put it at the maximum setting, we just showed a 18 PLM image and said: Can your microscope get to an 19 image this bright. That is a question that is 20 eminently from Mr. Hess because he's the one doing 21 the analysis, looking down the microscope, 22 controlling the illumination settings. He's the one 23 with 40 years of PLM experience. 24 What is so damaging -- I mean what is 25 so harmful to Mr. Hess to ask a question about, is</p>
<p style="text-align: right;">Page 24</p> <p>1 your microscope able to produce an image this bright? 2 He should be able to answer that question easily. 3 And I want to get at your -- the first 4 one about the 2019 testing, because that is critical, 5 critical, critical to the issues. And it goes 6 directly to his firsthand knowledge because his 7 firsthand knowledge is him doing the tests in 2019 8 and doing the tests in 2020 and afterwards. 9 And I want to be very clear on this. 10 There is PLM testing that Mr. Hess did of our talc 11 samples in the original round of testing under 12 similar microscopic conditions, meaning the same oil 13 and those sorts of things. Dozens of tests. He 14 doesn't find chrysotile in any of those. 15 Then all of a sudden in 2020, he's 16 finding chrysotile in all these samples. Mr. Hess 17 again. Mr. Hess before, Mr. Hess afterwards. 1.55 18 oil before, 1.55 oil afterwards. It goes directly to 19 the how and why of his testing at issue right now, 20 the new testing, to ask him why were you not able to 21 find chrysotile before and were able to find it now? 22 And we raised it on the first page of our motion. 23 It's just an obvious question to ask him. There is 24 something going on here that they're changing their 25 methodology or not or just changing what they're</p>	<p style="text-align: right;">Page 25</p> <p>1 looking at or changing the results. 2 The fact that it's Mr. Hess looking at 3 the same kinds of samples, our talc, under the same 4 microscopic conditions, both for testing in this MDL 5 and he's getting different results, is fundamentally 6 what is at issue with his chrysotile testing. 7 Yes, it may touch on prior testing, but 8 it goes -- it is at the heart of the how and why he's 9 doing the PLM testing now, the chrysotile testing 10 that's at issue in this motion and in the 2020 11 testing onward. 12 SPECIAL MASTER SCHNEIDER: I have to 13 say, Mr. Bush, I'm not going to ask you a question, 14 we'll go to Ms. O'Dell, but the example you gave is a 15 great example of an objectionable question. 16 The purpose of this argument and the 17 issue to address is whether the questions that you 18 asked fit within the parameters that the Special 19 Master has already set. The boundaries of this 20 deposition are already set. The order and the 21 direction at the beginning of Hess' deposition. The 22 only question now is whether the questions that were 23 objected to fit within the parameters. 24 We are not going back to square one and 25 hearing the issues de novo. The Special Master</p>

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<p>1 unequivocally stated, and in my order you're going to 2 see the page and line number, that the purpose of the 3 deposition is not to compare one to the other. So 4 when you say you want to compare the new test to the 5 2019 test, that is a perfect example of an 6 objectionable question.</p> <p>7 I know you disagree with me. Obviously 8 you disagree and I respect your disagreement, but 9 we're only here to address whether the questions fit 10 within the parameters that were already set: 11 Firsthand knowledge, personal knowledge, no 12 comparisons, no hypothetical questions.</p> <p>13 If he's looking down the microscope and 14 he sees a color, he can obviously answer that. He 15 can answer what his settings were. He can answer 16 were they maximum settings. He's not there to answer 17 why did you use this setting rather than that 18 setting. That wasn't the purpose of why his 19 deposition was permitted. He's not a testimonial 20 expert and it was not intended that he be deposed as 21 if he were a testimonial expert.</p> <p>22 But we've talked a lot. Let's give -- 23 MR. BUSH: Your Honor, I need to 24 respond. I understand you want to give Ms. O'Dell a 25 turn. And I understand that this is -- the way you</p>	<p>1 described it is a unique argument because we're 2 talking about your own intent. But I need to respond 3 to that because your opinion, your original written 4 opinion, which gives no limitations on the deposition 5 whatsoever, says that an important testimony is the 6 how and the why of the testing. And so it is 7 directly relevant why he's finding chrysotile now 8 when he didn't before.</p> <p>9 The other thing I want to say is that 10 your Honor at that depo, right after the page and 11 line said, we'll revisit this afterward. And so now 12 is the time to revisit it.</p> <p>13 The other thing I want to say about it 14 is, when you said there is not a basis for 15 comparisons, you said that wasn't the arguments that 16 were made in the briefing. And those were the 17 arguments we made in the briefing. On the very first 18 page we said, they're claiming to find chrysotile now 19 when they never did it before.</p> <p>20 So I think the fact that -- and I 21 understand that I'm arguing about what your intent 22 is, but the fact that you said the why of the testing 23 was relevant, that you said that we persuasively 24 argued that Mr. Hess is making all the key decisions, 25 he's called an expert all the time, the Plaintiffs</p>
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<p>1 invoked the rule for non-testifying experts which 2 allow us to get at his expert opinions, the why of 3 the testing goes directly to why they're finding 4 chrysotile now and not before, that you said we would 5 revisit this, and that the basis of your ruling was 6 this wasn't the arguments that the Defendants made in 7 their motion. And it was in the motion. So I think 8 it's very much at issue in this argument, whether we 9 should be allowed to ask those comparison questions 10 which go directly to the most important issues of 11 Mr. Hess' testing that only Mr. Hess can answer 12 because he's the one doing the analysis.</p> <p>13 SPECIAL MASTER SCHNEIDER: Ms. O'Dell, 14 anything you want to say?</p> <p>15 I mean we started this discussion with 16 my confusion about why Defendants were arguing that 17 Longo testified that only looking down the microscope 18 was effective, but yet they're cross-examining Hess 19 on photographs. And then we went off on a tangent.</p> <p>20 So you may or may not have anything to 21 say. I'm not compelling you to say anything, but I 22 certainly want to give you an opportunity if there is 23 something you want to add.</p> <p>24 MS. O'DELL: Your Honor, there are many 25 things that I want to say, but for purposes of your</p>	<p>1 time, I'm going to try to be efficient.</p> <p>2 I will say this, because I think it's a 3 fundamental sort of construct we need to keep in mind 4 for this testing. I heard Mr. Bush say two or three 5 times in the last three minutes that he's finding 6 chrysotile now, but he did not find chrysotile before 7 in the 2019 and other testing. I assume he's talking 8 about the February 2019 second supplemental report of 9 the MDL, which we have stated over and again in our 10 briefing did not seek to identify chrysotile. It was 11 heavy liquid density separation that was intended to 12 examine Johnson & Johnson's Baby Powder and Shower To 13 Shower for amphibole asbestos, not serpentine mineral 14 like chrysotile. It was not the focus of the 15 testing.</p> <p>16 So for counsel, who knows that very 17 well, to suggest that somehow they looked for it 18 before, didn't find it, but now they are, and calling 19 into question the methodology is really -- is an 20 inaccurate statement of what was done previously. 21 And I would just want to start with that because I 22 think that is important.</p> <p>23 Second, as to Dr. Longo's testimony and 24 what he said previously, he testified for two days in 25 the MDL over all of these reports. And there is not</p>

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<p style="text-align: right;">Page 30</p> <p>1 one instance where he said I need to look down the 2 microscope, that I can recall. He looked at 3 photomicrographs on the Zoom. We cited that 4 testimony, both in relation to this motion and 5 certainly in the relation to the motion to inspect 6 the MAS lab, and that's something, your Honor, that I 7 would keep in mind.</p> <p>8 In regard to Mr. Hess' deposition, we 9 had your Honor hear the objection that we made, your 10 Honor issued a ruling, and this was the construct by 11 which we tried to formulate objections.</p> <p>12 And as you saw from the transcript that 13 you reviewed, it was a hotly contested deposition, 14 but this was the construct that I was working under. 15 It had to be a report at issue in the MDL. And 16 despite what your Honor said three times, Mr. Hess 17 was asked about a report that was issued in a North 18 Carolina court in 2020 that had to do not with 19 Johnson & Johnson Baby Powder, but a work apron that 20 had been tested.</p> <p>21 He was asked about Cargille glass and 22 testing of Cargille glass.</p> <p>23 Third, he was asked in Exhibit 27 of 24 the deposition, he was asked about a 2011 report 25 involving not Johnson's Baby Powder, but asbestos</p>	<p style="text-align: right;">Page 31</p> <p>1 testing, which I am not quite sure even what that is. 2 But obviously, reports that are unrelated to the work 3 in the MDL.</p> <p>4 We focused on -- any time he was asked, 5 what did you do, what did you see, he responded to 6 questions, your Honor. And specifically on page 61 7 he was asked: How should the illumination be set on 8 the Olympus Microscope when doing this analysis?</p> <p>9 He responded: I would always set it 10 myself to the highest illumination. That was his 11 response. He gave similar responses at other times 12 during the deposition. That was on page 61 at lines 13 20 through 25.</p> <p>14 You said don't allow questions and 15 instruct him not to answer questions about comparing 16 his work to others, which we followed your 17 instructions.</p> <p>18 He was asked about standards, including 19 ISO622-2. And I may have the numbers a little wrong, 20 your Honor, but that's not something that he used in 21 the actual work. That's something Dr. Longo has 22 opined on. And we gave him an instruction not to 23 answer that question.</p> <p>24 Dr. Longo's reports have a long 25 narrative as a part of the reports. Mr. Hess'</p>
<p style="text-align: right;">Page 32</p> <p>1 limited part, it's not an unimportant part, but it's 2 a limited part to prepare the bench sheets and the 3 photomicrographs that take pictures of the particle 4 of suspicion that he's identified as chrysotile.</p> <p>5 And he said, and I would direct your 6 Honor to the deposition at page 144 through 147 where 7 he gave a complete analysis of how he did this, how 8 he would line it up, how he would focus on what 9 appeared to be a suspicious particle, how he would 10 make sure it was fibrous in nature. And then he 11 walked through what he did. And once he identified 12 it, if he -- if he identified it as chrysotile, how 13 he would then take a photomicrograph to the best of 14 the machine's ability to capture what he was looking 15 at. And then when he was asked about those 16 questions, about the particle of interest, the 17 chrysotile, he answered those questions to the best 18 of his ability. Your Honor, not with a high 19 resolution photo in a room, but on a screen, Zoom, 20 and often it was placed in a PowerPoint. It actually 21 wasn't even the report that was being issued.</p> <p>22 So that was very difficult, but he 23 answered all those questions to the best of his 24 ability.</p> <p>25 Now, Mr. Bush raises the issue about he</p>	<p style="text-align: right;">Page 33</p> <p>1 couldn't talk about talc. There were instances where 2 he was asked about questions regarding talc that 3 weren't in the primary field or the focus of the 4 actual photomicrograph. They were in the 5 photomicrograph, but were not actually the part 6 around the particle or in focus like the particle he 7 was reporting on. They asked him questions and there 8 were certain instances where he didn't report on that 9 particle and it would have been improper to have him 10 give an opinion on the fly in the deposition, which 11 is what we argued should not be appropriate.</p> <p>12 So there are other instances where, and 13 I would just get the last one, your Honor. He was 14 asked about Dr. Wiley and Dr. Su's reports and what 15 his opinions were. We instructed him not to answer 16 because that's not his view. That's for Dr. Longo as 17 the testifying expert.</p> <p>18 So we believe that, in fact, he was 19 asked about his methodology and what he saw, about 20 certain photomicrographs, and had they really wanted 21 to know exactly what his process was report by 22 report, they would have shown him those things in a 23 methodical fashion and they would have gotten their 24 answers. But that's not what they did. They kept 25 creating these exhibits, comparing photomicrographs</p>

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<p style="text-align: right;">Page 34</p> <p>1 with the reports at issue with other photos which 2 were unfair. 3 And I would just end with this. 4 Mr. Bush argued a minute ago he was shown an image 5 and said can you make an image this bright. 6 And I would just point out for the 7 court so you know the context, it was an image taken 8 by Dr. Su, he had never seen it before, didn't know 9 the context, didn't know what it was, and he was 10 asked can you make an image that bright. How is a 11 person to answer that question? All he was there to 12 answer is what, in fact, he did do. And he, in every 13 instance, was prepared and would respond to those 14 questions if it was appropriate. 15 So that's what I have, your Honor. And 16 to the degree that they say it colors one thing or it 17 colors another, that's going to be a question for the 18 jury, if this testimony is heard. 19 And I see Mr. Placitella is on video, 20 which he may have something to add and I would invite 21 him to do that. 22 MR. PLACITELLA: I have one thing to 23 add and I apologize for my attire, I didn't have this 24 on my schedule. No disrespect intended. 25 There is a bottom line here. I took</p>	<p style="text-align: right;">Page 35</p> <p>1 Dr. Su's deposition and Dr. Wiley's deposition. And 2 they both said, based upon the photomicrographs taken 3 by Mr. Hess, they came to their own independent 4 conclusion that it was not asbestos. 5 And I said: Did you need anything 6 else, anything else, in order to come to that 7 conclusion? 8 And they said no, I can do that based 9 upon the photo that was generated by Mr. Hess. 10 So all of this, respectfully, is a lot 11 of gamesmanship because their expert is able to give 12 their own opinion, right, based upon the data that 13 was generated. So the questions about how you 14 generated that data are appropriate. His 15 interpretation of the data is not appropriate. 16 That's all I have to say. 17 SPECIAL MASTER SCHNEIDER: If you'll 18 indulge me, let's go to some questions I have about 19 specific objections. And by the time we get through 20 with them, I think we will, my guess is, cover all of 21 the arguments you want to make. 22 I numbered the objections, but I'll 23 give you the page and line number. 24 Number two, page 54, line 17 to page 25 55:25.</p>
<p style="text-align: right;">Page 36</p> <p>1 MR. BUSH: I'm sorry, your Honor, do 2 you mind repeating that? I was looking -- 3 SPECIAL MASTER SCHNEIDER: It's the 4 second objection starting at page 54:17. 5 MR. BUSH: Sure. 6 SPECIAL MASTER SCHNEIDER: What is the 7 question that you wanted to ask that was objected to? 8 MR. BUSH: It was -- it was the 9 question right before, your Honor, on the first one 10 on that page is: Typically, when MAS is identifying 11 chrysotile in Johnson & Johnson, what was being 12 called chrysotile was yellow in parallel, right? 13 And we got all these objections and an 14 instruction not to answer that it has to be about 15 specific reports. 16 So the follow-up was: In the reports 17 where you're identifying chrysotile in Johnson & 18 Johnson, what color are the particles that you're 19 calling chrysotile typically in parallel? 20 It's the question on lines 17 to 20. 21 SPECIAL MASTER SCHNEIDER: And the 22 objection to that, Leigh, is what? 23 MS. O'DELL: Well, we didn't know what 24 report he was talking about, your Honor. I mean was 25 it a report in the MDL or was it not? And I was</p>	<p style="text-align: right;">Page 37</p> <p>1 trying to ask, and you'll see at lines seven through 2 13. And I said, if you'd like to ask Mr. Hess about 3 specific reports, he's here and he's prepared to 4 respond, but asking for expert opinion beyond the 5 scope is beyond the scope of your order. And we 6 never really got a direction to a report. 7 And your Honor, there are, you know, a 8 number of reports at issue in MDL, but there are a 9 greater number of reports that Dr. Longo has issued 10 over the years after testing Johnson's Baby Powder 11 and a number of other substances. 12 I will tell you from my perspective, I 13 don't have knowledge of those, I can't formulate an 14 analysis on reports. And that's why I was very 15 specific. Okay. Tell us what report you're 16 referring to. And they didn't. 17 Now, he goes on to say, he was asked 18 about line 17, he asked: In your reports identifying 19 chrysotile, what color are the particles that you're 20 calling chrysotile typically in parallel? 21 And he answered that question, which 22 sort of gets really even to the heart of it after the 23 objection that I lodged. 24 MR. BUSH: Sorry. What lines are you 25 referring to where you're saying he answered it?</p>

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<p style="text-align: right;">Page 38</p> <p>1 MS. O'DELL: Let me make sure I'm at 2 the right place. Page 54, line 17. He answered the 3 question at line 22 through 24. 4 MR. BUSH: Right. Right. So he 5 doesn't answer the question there because the 6 question is: What color are the particles? 7 And he's saying: I used the wave 8 length at the edge of the particle, not the center. 9 And so the follow-up question is: What 10 color are they? 11 And then the question is: Well, what 12 are you talking about? 13 And then: The particle that you're 14 calling chrysotile in the reports that you're talking 15 about today. We just wanted -- the question is very 16 simple. What color are the particles typically that 17 you're calling chrysotile in the reports we're all 18 here to talk about? 19 He doesn't answer that question there. 20 MS. O'DELL: Well, he doesn't -- well, 21 again, we asked for a specific report. Obviously, 22 Mr. Bush, you and Mr. Dubin are very capable of 23 pointing to a specific report. 24 And, your Honor, I'll direct my 25 comments to you, I'm sorry, I shouldn't be talking to</p>	<p style="text-align: right;">Page 39</p> <p>1 other counsel. 2 SPECIAL MASTER SCHNEIDER: The fourth 3 supplemental report? 4 MS. O'DELL: I'm sorry. I missed that, 5 sir. 6 MR. BUSH: The fourth supplemental 7 report that has at the end the tables that 8 incorporate by reference all of his other prior -- 9 the prior testing that he's relying on for purposes 10 of the chrysotile. 11 SPECIAL MASTER SCHNEIDER: No. No. 12 No. No. And I looked for it before we started and 13 I'm sorry I couldn't track it down. There was a 14 chart attached to Dr. Su's report and there was a 15 chart attached to Dr. Wiley's report which identified 16 the specific new PLM test. Those are the tests at 17 issue. 18 MR. BUSH: Your Honor, we went over 19 this all in the last round of arguments. It 20 doesn't -- we think those match up exactly with the 21 ones in Longo's report. But what we should be 22 looking at is not our expert report, it's what 23 testing did Dr. Longo say he's relying on. There are 24 tables at the end of his report that incorporate by 25 reference all his prior testing and we matched up, in</p>
<p style="text-align: right;">Page 40</p> <p>1 our brief here, every test we were asking a question 2 about to one of those questions. 3 SPECIAL MASTER SCHNEIDER: But I don't 4 know, Mr. Bush, if the tests in Mr. Longo's report 5 are just the new PLM testing method. I don't know 6 that. 7 MR. BUSH: Yes, your Honor. 8 SPECIAL MASTER SCHNEIDER: I limited 9 the deposition to only those tests. 10 MR. BUSH: Yes, your Honor. And look, 11 let me pull up the exhibit so I can show you exactly 12 what the chart is that we were referring to. 13 It's Exhibit D to our motion. I have 14 it in paper copy, so I'm just pulling it up on my 15 screen, if you bear with me. 16 SPECIAL MASTER SCHNEIDER: I have the 17 fourth supplemental report here. 18 MR. BUSH: Okay. So if you look at 19 page -- they don't have page numbers, but if you go 20 to page 15, then the next page which would be 16, has 21 a table of all of his new reports. And if you look 22 at the very right column, there is CSM, chrys 23 percentage. Any time he's reporting something in the 24 CSM chrysotile percentage, that is his new chrysotile 25 testing that he is incorporating by reference in his</p>	<p style="text-align: right;">Page 41</p> <p>1 new report. 2 SPECIAL MASTER SCHNEIDER: There are, 3 what, seven or eight tables that are attached to the 4 report. Are you incorporating every table? 5 MR. BUSH: This is Dr. Longo's report. 6 And what Dr. Longo says at the beginning of the 7 report is I'm not reproducing all my reports because 8 Johnson & Johnson already has them from all this 9 underlying talc litigation. So I'm just going to put 10 a table at the end. This is what Dr. Longo's -- this 11 is Dr. Longo's report. This is the test that he is 12 incorporating by reference to this MDL. That's what 13 this table is. 14 MS. O'DELL: Your Honor, can I speak to 15 this? I'm so sorry. And I don't want to interrupt 16 you, but I -- 17 SPECIAL MASTER SCHNEIDER: Go ahead. 18 MS. O'DELL: Certainly there is the 19 table that you're seeing at the end of his fourth 20 supplemental report. Produced along with that fourth 21 supplemental report were a number of other underlying 22 reports. So you'll see on page -- let me just get to 23 the top, your Honor, just to make it easy. 24 The first sample in the table one is 25 from the Weirick case, W-E-I-R-I-C-K. And that</p>

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<p style="text-align: right;">Page 42</p> <p>1 underlying Weirick Report was produced in the MDL as</p> <p>2 part of the backup material for the fourth</p> <p>3 supplemental report.</p> <p>4 And so as I went through the</p> <p>5 deposition, my guide was actually what we had</p> <p>6 produced in the MDL as an underlying report. That's</p> <p>7 how we approached it. And so I feel like that's</p> <p>8 important to note.</p> <p>9 I know we compared it to at least Su or</p> <p>10 Wiley's chart, but that was the guide. And if it was</p> <p>11 produced in the MDL, there was no objection to the</p> <p>12 question about the underlying findings.</p> <p>13 SPECIAL MASTER SCHNEIDER: So, Leigh,</p> <p>14 tables one to seven, are those the tests that Longo</p> <p>15 was going to rely upon at trial?</p> <p>16 MS. O'DELL: For his new testing, his</p> <p>17 new PLM testing, not -- again, not the prior</p> <p>18 amphibole testing. Yes.</p> <p>19 SPECIAL MASTER SCHNEIDER: And tables</p> <p>20 one to seven, are they only the new testing methods?</p> <p>21 MS. O'DELL: Yes, they are, your Honor.</p> <p>22 And, Matt, may I share my screen? Do</p> <p>23 you mind?</p> <p>24 MR. BUSH: Sure. Sure. Sorry if I'm</p> <p>25 blocking that.</p>	<p style="text-align: right;">Page 43</p> <p>1 MS. O'DELL: No problem.</p> <p>2 And because I want to give you a sense,</p> <p>3 your Honor, of what we did share so you'll get the</p> <p>4 full, and I'm hopeful you're seeing my screen now.</p> <p>5 SPECIAL MASTER SCHNEIDER: Yes.</p> <p>6 MS. O'DELL: Are you seeing this folder</p> <p>7 that I show here?</p> <p>8 SPECIAL MASTER SCHNEIDER: Yeah, I have</p> <p>9 the report in front of me.</p> <p>10 MS. O'DELL: Yes, sir.</p> <p>11 And I don't know -- I want to make sure</p> <p>12 you're seeing my folder, and it shows all of the</p> <p>13 listing of the underlying reports that we produced to</p> <p>14 Defendants when we made our disclosure in November of</p> <p>15 2017.</p> <p>16 SPECIAL MASTER SCHNEIDER: Do you know</p> <p>17 what I'm referring to when I refer to the chart that</p> <p>18 was attached to Dr. Su and Dr. Wiley's report?</p> <p>19 MS. O'DELL: I remember you referring</p> <p>20 to it, your Honor. I can't tell you I remember it</p> <p>21 with specificity, but I know what you're talking</p> <p>22 about.</p> <p>23 SPECIAL MASTER SCHNEIDER: Do you know</p> <p>24 if that chart is identical to tables one to seven?</p> <p>25 MS. O'DELL: I don't know the answer to</p>
<p style="text-align: right;">Page 44</p> <p>1 that, your Honor. I would need to look at that.</p> <p>2 SPECIAL MASTER SCHNEIDER: Okay.</p> <p>3 So Matt, is what you want to know is,</p> <p>4 what color was the chrysotile in tests that are</p> <p>5 listed in tables one to seven?</p> <p>6 MR. BUSH: For this question that we're</p> <p>7 referring to, yes. The question is: What color are</p> <p>8 you typically -- I'm just going to -- typically when</p> <p>9 MAS was identifying chrysotile in the reports at</p> <p>10 issue in tables one through seven, what color were</p> <p>11 you typically calling chrysotile in parallel?</p> <p>12 I might not have phrased the question</p> <p>13 perfectly.</p> <p>14 SPECIAL MASTER SCHNEIDER: Okay.</p> <p>15 MS. O'DELL: He goes on to say, your</p> <p>16 Honor, just to be clear, and birefringence relates to</p> <p>17 the color. And he was asked on page 56, just</p> <p>18 following the question we were talking about, what</p> <p>19 color, what is the refractive index of talc?</p> <p>20 It has a wide -- a large birefringence,</p> <p>21 but normally it will be somewhere in the range of</p> <p>22 around 1.540 to 1.605 based on the experience of what</p> <p>23 I've seen, which provides information about the color</p> <p>24 of the talc that he's seeing.</p> <p>25 I believe that question was answered.</p>	<p style="text-align: right;">Page 45</p> <p>1 MR. BUSH: We're not even up to that.</p> <p>2 There is a question about; what color</p> <p>3 are you typically calling chrysotile in the reports</p> <p>4 at issue?</p> <p>5 SPECIAL MASTER SCHNEIDER: Next</p> <p>6 objection.</p> <p>7 MR. BUSH: Yes.</p> <p>8 SPECIAL MASTER SCHNEIDER: It's number</p> <p>9 three on my list, page 58:23.</p> <p>10 MR. BUSH: Yep.</p> <p>11 SPECIAL MASTER SCHNEIDER: I was</p> <p>12 unclear on what exhibit is being referred to in this</p> <p>13 colloquy.</p> <p>14 MR. BUSH: This is -- I can tell you</p> <p>15 which report it is.</p> <p>16 If we go to table four, row 18 of --</p> <p>17 and I can share my screen again. This was M70484-001</p> <p>18 was the report that we were looking at.</p> <p>19 SPECIAL MASTER SCHNEIDER: Number 18?</p> <p>20 MR. BUSH: Yeah. What I had written</p> <p>21 down was table four, row 18, 704804 (sic).</p> <p>22 SPECIAL MASTER SCHNEIDER: Okay.</p> <p>23 And is that the only test that's being</p> <p>24 referred to in this question?</p> <p>25 MR. BUSH: Yes, your Honor.</p>

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<p style="text-align: right;">Page 46</p> <p>1 SPECIAL MASTER SCHNEIDER: Okay.</p> <p>2 Next, page 65:17.</p> <p>3 You asked about the blue light or</p> <p>4 daylight filter. Was the blue light or daylight</p> <p>5 filter used on the tests in tables one to seven?</p> <p>6 MR. BUSH: It is supposed to be used,</p> <p>7 according to the protocol that he's supposed to be</p> <p>8 following. And Mr. Hess testified that for these</p> <p>9 images on this microscope that he did not use a blue</p> <p>10 light or daylight filter. But it was -- the purpose</p> <p>11 of the question is that the methodology that he's</p> <p>12 supposed to be following requires a blue light or</p> <p>13 daylight filter. And so the question goes to the how</p> <p>14 and the why of this testing. Why is he not using a</p> <p>15 blue light filter when the methodology requires it?</p> <p>16 Does he not know the purpose of it? Or does he know</p> <p>17 the purpose and is intentionally not using it? And</p> <p>18 what is the reason that he's not using it?</p> <p>19 That's why we're asking those</p> <p>20 questions.</p> <p>21 MS. O'DELL: Your Honor, at page 65,</p> <p>22 lines five through 11, he was asked about a blue</p> <p>23 light or daylight filter and then he answered the</p> <p>24 question.</p> <p>25 SPECIAL MASTER SCHNEIDER: Okay.</p>	<p style="text-align: right;">Page 47</p> <p>1 Next is number five on my list, page</p> <p>2 66:2.</p> <p>3 Matt, the question that the witness was</p> <p>4 instructed not to answer was what?</p> <p>5 MR. BUSH: Starting on lines 11 to 14,</p> <p>6 I'm asking him now about -- it's a follow-up to the</p> <p>7 question before.</p> <p>8 I'm asking him now what his</p> <p>9 understanding of the purpose of that type of filter</p> <p>10 is.</p> <p>11 Are you instructing him not to answer</p> <p>12 that question?</p> <p>13 And then he's instructed not to answer.</p> <p>14 SPECIAL MASTER SCHNEIDER: Okay. He</p> <p>15 said he did not use that blue light or daylight</p> <p>16 filter?</p> <p>17 MR. BUSH: For this set of tests, yes.</p> <p>18 He testified earlier that he didn't use it or at</p> <p>19 least couldn't recall using it. And so the question</p> <p>20 is why, which goes directly to the how and why of the</p> <p>21 testing that was to be covered at the deposition.</p> <p>22 SPECIAL MASTER SCHNEIDER: Okay.</p> <p>23 MS. O'DELL: Your Honor, may I respond</p> <p>24 to that? If you don't want me to, I'll --</p> <p>25 SPECIAL MASTER SCHNEIDER: No, go</p>
<p style="text-align: right;">Page 48</p> <p>1 ahead.</p> <p>2 MS. O'DELL: I'm just saying, for him,</p> <p>3 he was asked: Did you use a blue light filter?</p> <p>4 And if you see on page 68, lines three</p> <p>5 through seven, he said: I don't recall ever dealing</p> <p>6 with them, blue light filter or daylight filter. He</p> <p>7 was asked that again.</p> <p>8 He responded. That was his role, to</p> <p>9 say I did it or I didn't. But the methodology and</p> <p>10 whether it's appropriate, that methodology is for Dr.</p> <p>11 Longo. And so I would just, you know, for Doctor --</p> <p>12 excuse me, for Mr. Hess, it wasn't for him to testify</p> <p>13 to whether the methodology is appropriate, not</p> <p>14 appropriate. It was what did he do. And he was</p> <p>15 honest in saying, I don't recall ever dealing with</p> <p>16 them.</p> <p>17 MR. BUSH: And your Honor's opinion</p> <p>18 says we're entitled to ask -- that we're not entitled</p> <p>19 to assume that Mr. Hess is following the methodology</p> <p>20 that he's -- the written methodology that he's</p> <p>21 supposed to. The written methodology says he's</p> <p>22 required to use a blue light or daylight filter. He</p> <p>23 says at minimum he doesn't remember ever dealing with</p> <p>24 that. So why is he not using the blue light filter</p> <p>25 when the methodology that he's supposed to be</p>	<p style="text-align: right;">Page 49</p> <p>1 following requires it?</p> <p>2 It goes directly to the how and the why</p> <p>3 of the testing.</p> <p>4 SPECIAL MASTER SCHNEIDER: Why didn't</p> <p>5 you ask Longo that question?</p> <p>6 MR. BUSH: Because he's the one at the</p> <p>7 microscope. Dr. Longo doesn't know what Mr. Hess is</p> <p>8 doing at the microscope. Dr. Longo says, use the</p> <p>9 ISO22262-1 methodology. Mr. Hess goes and does it,</p> <p>10 or doesn't do it appropriately. And so we asked, are</p> <p>11 you the one who's actually putting on the filter and</p> <p>12 taking off the filter, using this filter.</p> <p>13 He's probably the only one who actually</p> <p>14 knows the answer to that question because he's the</p> <p>15 one doing it.</p> <p>16 SPECIAL MASTER SCHNEIDER: Okay.</p> <p>17 Next one I have is number six, page</p> <p>18 69:3.</p> <p>19 You asked if a blue light or daylight</p> <p>20 filter is being used on this image. What image are</p> <p>21 you showing him?</p> <p>22 MR. BUSH: That is an image of -- it's</p> <p>23 an image of talc that's not one of the ones that's at</p> <p>24 issue in this report, but it's an MAS image of talc.</p> <p>25 And so the reason for the questioning is the colors,</p>

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<p>1 which is, as you know, your Honor, the key issue in 2 this whole thing is the colors. So why does an MAS 3 image of talc look different in another report than 4 his images?</p> <p>5 We have no idea what they're doing to 6 make it different.</p> <p>7 Is it because he removed the blue light 8 filter when doing this testing?</p> <p>9 Is he doing it intentionally?</p> <p>10 Is he doing it unintentionally? We 11 don't know because we're not allowed to ask the 12 questions.</p> <p>13 SPECIAL MASTER SCHNEIDER: Next I have 14 is number 7, page 70:6.</p> <p>15 MR. BUSH: So this is Vanderbilt test. 16 This is the example -- this is Vanderbilt talc. This 17 is the example we included at the end of our motion. 18 And the reason -- so this is -- the test he's being 19 compared to is not one of the ones in the tables one 20 through seven, but this is why it's super critical, 21 because it's Mr. Hess testing the same sample talc, 22 using the same oil, 1.550, used in about a month 23 apart. And the colors look totally different.</p> <p>24 We do not know why the colors look 25 totally different. That goes directly to the how and</p>	<p>1 the why of the testing. And Mr. Hess is the only one 2 who knows because he was the analyst on both of those 3 things. So he's the one controlling the microscope 4 settings. And if he's intentionally changing the 5 settings to get different results, that's really 6 relevant. If he's unintentionally changing the 7 settings to get different results, that's also 8 relevant.</p> <p>9 What are the different settings?</p> <p>10 Relevant.</p> <p>11 All go to the how and the why of the 12 testing. And I will tell you this, your Honor, every 13 single question here goes to the how and the why of 14 the PLM testing at issue in those seven tables.</p> <p>15 SPECIAL MASTER SCHNEIDER: Number nine, 16 page 76:5.</p> <p>17 What is a reference sample?</p> <p>18 MR. BUSH: It's a -- there it's -- this 19 is talc from the USP, the United States Pharmacopeia. 20 It's like a -- it's a non-profit, sort of like a 21 standards organization that has reference samples for 22 talc.</p> <p>23 So the question is, how come your talc 24 doesn't look like talc in the standard reference 25 images that people use to understand what talc looks</p>
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<p>1 like? Is it because you're changing the settings? 2 What about the settings are different? That's why we 3 want to ask him why his talc looks different.</p> <p>4 SPECIAL MASTER SCHNEIDER: So is this 5 another instance that doesn't look at tables one to 6 seven?</p> <p>7 MR. BUSH: It's a published standard, 8 your Honor. It's not asking about other tests that 9 he did or that someone else did. It's a published 10 standard. And the reason this is important is 11 because there is a debate about what color those 12 chrysotile particles look like.</p> <p>13 And one of the reasons you can tell 14 that the coloring of the images are off is because if 15 the talc particles, that we all know of talc, don't 16 look like talc, then clearly something is off with 17 the coloring.</p> <p>18 The example we sometimes use is if you 19 saw a picture and the sky was colored purple, that 20 would give you a hint, a very big hint, that 21 something else in that picture was probably also 22 tinted purple if the whole image is colored a 23 different -- is skewed towards a different color.</p> <p>24 So if the talc images don't look like 25 talc is supposed to look like, that shows why the</p>	<p>1 whole color is shifted in the wrong direction.</p> <p>2 So, again, I'll say it every single 3 time, it goes directly to the how and the why of the 4 testing that Mr. Hess did.</p> <p>5 MS. O'DELL: Your Honor, I would just 6 say, from my perspective, that this is another 7 instance where they're asking him to compare what he 8 did to somebody else. And that was clearly within 9 the scope of your direction to instruct him not to 10 answer.</p> <p>11 If they want to cross-examine Dr. Longo 12 on the difference in photographs and the USP versus 13 something in one of his reports, he's an expert and 14 that's fair game. But it did not go to the work that 15 Mr. Hess did.</p> <p>16 SPECIAL MASTER SCHNEIDER: Number 10, 17 page 76:19 to 78:9.</p> <p>18 What test is referred to here, Matt?</p> <p>19 MR. BUSH: This is the next one. It's 20 the 79:11? Sorry. I just want to make sure we're on 21 the same page.</p> <p>22 The one that says Zimmerman Report?</p> <p>23 SPECIAL MASTER SCHNEIDER: Yeah, 76:19.</p> <p>24 MR. BUSH: That is the Zimmerman Report 25 that is one of the -- that's one of the reports on</p>

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<p style="text-align: right;">Page 54</p> <p>1 the list. I'll get you the exact number, if you give 2 me a moment.</p> <p>3 So that is sample M70484 and it is 4 table one, row two in Dr. Longo's fourth supplemental 5 MDL report.</p> <p>6 SPECIAL MASTER SCHNEIDER: And what is 7 the question that's being asked that's objected to, 8 Matt?</p> <p>9 MR. BUSH: What color -- so it's a few 10 times, but line two, what color is that?</p> <p>11 Why don't we start at line 24, so it's 12 page 76 line 24 through -- it must be 77, line two.</p> <p>13 So this is something that you're 14 calling chrysotile in parallel in 1.550. What color 15 is that?</p> <p>16 And, your Honor, we have it -- I mean 17 it's the first example in our brief, we have the 18 image that he's being asked about.</p> <p>19 SPECIAL MASTER SCHNEIDER: Mr. Ludwig, 20 what's the objection on line 22?</p> <p>21 MS. O'DELL: You're on mute.</p> <p>22 MR. LUDWIG: I'm sorry, your Honor.</p> <p>23 If I read this correctly, it was -- 24 once again, when it goes to what is the color, it is 25 an objection because it's an opinion -- calls for an</p>	<p style="text-align: right;">Page 55</p> <p>1 opinion -- it's calling for an opinion on that color.</p> <p>2 SPECIAL MASTER SCHNEIDER: Isn't that 3 what he -- I mean that's -- I said he could testify 4 to his personal observation, firsthand knowledge. 5 He's looking down the microscope, he sees a color, 6 you're saying he can't answer that?</p> <p>7 MR. LUDWIG: If I recall --</p> <p>8 MS. O'DELL: Your Honor, I'm sorry if 9 I'm interrupting you, Mr. Ludwig, forgive me. But 10 just maybe it helps a little bit. There was a long 11 colloquy, Judge, and if you get to page 80.</p> <p>12 MR. LUDWIG: That's what I was going to 13 say. If you get to page 80, he answers the question 14 on page 80, your Honor.</p> <p>15 Thank you, Leigh. I'm sorry. I was 16 actually getting to that. I was trying to follow 17 through because I think that it goes to -- the 18 question is asked again on 78 through 79 and he says 19 the center part is golden yellow. On page 80, lines 20 two through four.</p> <p>21 SPECIAL MASTER SCHNEIDER: So if the 22 question was answered, why is it on this list?</p> <p>23 MR. BUSH: Well, it's on the list for a 24 couple reason, your Honor.</p> <p>25 One is we shouldn't have to fight</p>
<p style="text-align: right;">Page 56</p> <p>1 through two or three instructions not to answer to 2 get to every question that we want. This is so 3 clearly relevant that we shouldn't have to have a 4 page of instructions not to answer and back and forth 5 with the attorneys. We should get -- we should just 6 be able to get an answer to this.</p> <p>7 And second, I'll point out that his 8 answer is that at the edge, which is what I need to 9 look at, I can't tell from the image. So if you want 10 to talk about who's saying they need the image or 11 don't need the image to look at, right here Mr. Hess 12 is saying I can't even tell what the color is of the 13 part that I need to see on the image that I took and 14 produced. That's the answer that he ultimately 15 gives.</p> <p>16 MR. LUDWIG: But I think if you read 17 the next question, your Honor, Mr. Dubin just goes 18 into, we'll go into edge effect later on.</p> <p>19 SPECIAL MASTER SCHNEIDER: So what I'm 20 trying to find out, Matt, is this an objection I have 21 to rule on if Mr. Ludwig and Ms. O'Dell are saying 22 this question was answered?</p> <p>23 MR. BUSH: I mean, your Honor, I would 24 say that I'm not sure that -- look, if you want to go 25 through it question by question, then I'm happy to do</p>	<p style="text-align: right;">Page 57</p> <p>1 it.</p> <p>2 SPECIAL MASTER SCHNEIDER: That's what 3 we're doing.</p> <p>4 MR. BUSH: I think getting guidance to 5 what questions are permissible and what questions are 6 not permissible is going to help because it's not 7 necessarily the case that we want to ask only the X 8 number of questions that you rule are permissible. 9 There may be follow-up questions, there may be 10 something that he says that impacts another question.</p> <p>11 So I think we deserve a ruling that's 12 saying what color is that of the particle that's at 13 issue in this MDL is a permissible question rather 14 than having to go through this all over again where 15 we fight through ten instructions not to answer just 16 to get an answer from the -- to get a non-answer from 17 the witness.</p> <p>18 SPECIAL MASTER SCHNEIDER: Okay. Let's 19 go to number -- what I call 18, page 103:5 to 15.</p> <p>20 What is Cargille glass?</p> <p>21 MR. BUSH: Sorry. I have 103.</p> <p>22 So Cargille -- the purpose of this 23 question is Cargille glass is just another substance 24 that you can look at under the microscope. And the 25 key thing here is that it has a single known</p>

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<p style="text-align: right;">Page 58</p> <p>1 refractive index. The refractive index is the number 2 that comes from identifying what color the particle 3 is. 4 So even though it has a single known 5 refractive index, sometimes you can get multiple 6 different colors appearing on the edge. But those 7 colors are not part of -- are essentially ignored, or 8 we know they need to be ignored, because it has a 9 known refractive index that matches up with the color 10 that you're seeing in the bulk of the particle. 11 And there can be some internal lighting 12 refractive effects that create this color that's not 13 the true color that you should be looking at for 14 purposes of the refractive index. 15 So it is an example of how these edge 16 effects that you're seeing are not truly the colors 17 you should be looking at, but they're an artifact of 18 the lighting or the imaging. And the question is 19 about does Mr. Hess know about this potential effect 20 for the color to be not the color that you should be 21 reporting. 22 And so it goes directly to the how and 23 the why of his testing of why is he taking the colors 24 that he is, and what parts of the -- what areas -- 25 why is he looking at certain areas of the particle</p>	<p style="text-align: right;">Page 59</p> <p>1 and is that the correct thing to do? 2 SPECIAL MASTER SCHNEIDER: So the short 3 answer to my question is that this question and 4 objection does not involve one of the tests on tables 5 one to seven? 6 MR. BUSH: Your Honor, I'm always going 7 to tell you that it goes to the how and why of all 8 those testing. Every single one. 9 SPECIAL MASTER SCHNEIDER: Okay. 10 MR. BUSH: I'll keep giving that answer 11 every time. 12 SPECIAL MASTER SCHNEIDER: Okay. 13 Next, my number 19, page 109:19. 14 What is the exhibit that is referred to 15 here? 16 MR. BUSH: So ISO2262-1 is the protocol 17 that Mr. Hess is supposed to be following. 18 SPECIAL MASTER SCHNEIDER: Okay. 19 MR. BUSH: And it gives reference 20 images about what chrysotile is supposed to look 21 like. And what the refractive indices, again, the 22 number that comes from the color of the particle are 23 supposed to be. And so this question goes directly 24 to the methodology that he's supposed to be using. 25 SPECIAL MASTER SCHNEIDER: Got it.</p>
<p style="text-align: right;">Page 60</p> <p>1 Okay. Next one is my number 20, page 2 110:16. 3 MR. BUSH: It's the -- this is the 4 same -- this is the same thing, your Honor. It's 5 asking him about the reference image in the ISO 6 methodology that he's supposed to be following. 7 MS. O'DELL: And, your Honor, can I 8 just say, again, when the image was presented to Mr. 9 Hess, it was an incomplete depiction of what was 10 being examined. 11 Number two, and there is a number of 12 other objections and I don't want to belabor it, but 13 in terms of comparing this other image that he didn't 14 take, we felt that that was outside the bounds of 15 what the Court had ordered. And so that was the 16 reason, because this methodology, he said he has some 17 familiarity with it, but the methodology that he used 18 was methodology that he and Dr. Longo discussed. He 19 testified to that. And also Dr. Longo did as well. 20 And that is the methodology that's reflected in Dr. 21 Longo's report, which certainly does refer to 22 ISO22262. 23 But in terms of interpreting that 24 particular document, that was outside the scope of 25 his role as a fact witness. And that was the reason</p>	<p style="text-align: right;">Page 61</p> <p>1 for the objection. 2 SPECIAL MASTER SCHNEIDER: Next, my 21, 3 page 112:18. 4 This refers to a standard reference. 5 What is meant there, Matt? 6 MR. BUSH: This is still the same. 7 This is all covering the same topic. It's the 8 standard reference -- it's the ISO22262-1 standard 9 reference sample for chrysotile and the protocol that 10 he's supposed to be following. And we have it on 11 page 20 of our brief as exactly what is being shown 12 in these questions. 13 And this is -- and on page 21 of our 14 motion, we show that this is something we had argued 15 specifically in the original motion to compel 16 Mr. Hess' testimony. 17 SPECIAL MASTER SCHNEIDER: My number 22 18 is 123:4. Is this the same as what we just 19 discussed? 20 MR. BUSH: No. This is up to the 21 Valadez Report, which is in the tables one through 22 seven. I'll get you -- it is sample M71614 in his 23 fourth supplemental report. It's table six, row 41. 24 SPECIAL MASTER SCHNEIDER: And what is 25 the question that's objected to here?</p>

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<p style="text-align: right;">Page 62</p> <p>1 MR. BUSH: So I think there ends up 2 being a couple. But lines six through eight, what is 3 the CSDS? CSDS is Central Stop Dispersion Staining. 4 That's just the name of the color-based method that's 5 being used. So it's, what is the CSDS color that you 6 would use to assign a refractive index to that 7 particle? 8 MS. O'DELL: And I -- I'm sorry. 9 Excuse me. 10 SPECIAL MASTER SCHNEIDER: I'm a 11 little -- help me understand this one. 12 Is this asking about the methodology 13 that he used during this specific test? 14 MR. BUSH: I'm sorry. Is that a 15 question for me, your Honor, or for -- 16 SPECIAL MASTER SCHNEIDER: Yes. 17 MR. BUSH: Yes. He has an image and 18 we're asking him what is the color for the talc -- we 19 direct -- on line four through six, we direct him to 20 a talc particle and we ask: What is the color that 21 you would assign a refractive index to that particle. 22 So what color would you call that particle? This is 23 in the tests that are in Dr. Longo's report at issue 24 in this MDL differentiating talc from chrysotile is 25 the entire purpose of this analysis. If he can't</p>	<p style="text-align: right;">Page 63</p> <p>1 answer, what's the color of the talc particles, then 2 there is no reason for any of us to be here. 3 SPECIAL MASTER SCHNEIDER: Help me -- 4 one second, Leigh. 5 Help me understand, again, what CSDS 6 color is? 7 MR. BUSH: CSDS stands for Central Stop 8 Dispersion Staining, and it is the name of just the 9 broad method that's being used where you coat the 10 material in a particular oil and choose what color 11 it's being used. 12 The question would read identically if 13 you deleted CSDS, it's just a slightly more technical 14 term to say what color are you calling it. 15 SPECIAL MASTER SCHNEIDER: Okay. And 16 it says the bottom left. The bottom left of what? 17 MR. BUSH: Of the image that he was 18 being -- that he was being shown and directed to from 19 the reports at issue that are on tables one through 20 seven. 21 SPECIAL MASTER SCHNEIDER: Okay. 22 Leigh, did you want to address this? 23 MS. O'DELL: Yes, your Honor. 24 Number one is that this was an image, 25 if you go back, you'll look at the bottom of page 121</p>
<p style="text-align: right;">Page 64</p> <p>1 and it goes on. At different points he's saying that 2 he can't make the determination from a 3 photomicrograph on a screen. And at different times, 4 and I think it's the page before, he says it's not in 5 focus. 6 And they're asking him on the fly to 7 make a determination about a particle that he made no 8 finding on. It's in the photomicrograph, but he made 9 no finding. And so they're asking him on a Zoom for 10 a particle that's outside of -- that's not in focus 11 to make a determination. 12 And he says, you know, he says and he 13 was asked on line 13 through 16 on page 122. 14 So those talc plates, did the 15 reflective index that you assigned to them based on 16 their edges, did that correspond with red? 17 He says: I would not give it the same. 18 He's talking about -- and then he says: 19 No, I would not give it the same. 20 So he tries to answer the question, but 21 the bottom line is, he didn't analyze talc particles 22 and report on those. And so for them to ask him to 23 do that in this context on Zoom in a photomicrograph 24 that is focused on that image that he's reporting on, 25 we felt was inappropriate. And that's why I made the</p>	<p style="text-align: right;">Page 65</p> <p>1 objection. And I made it in a more fulsome way on 2 page 124 because he was asked again, what is the CSDS 3 color you were assigning to talc plates that we're 4 looking at. And that's where I give the objection. 5 And so, your Honor, it's not fair, you 6 know -- it's one thing if it's something that has 7 been focused on and he's reporting on as a chrysotile 8 image. It's another thing if it's a talc particle on 9 the edge of a photomicrograph and it's not in focus. 10 MR. BUSH: Your Honor, the pic -- these 11 kind of photos don't have like a focused part in the 12 center and a blurry part on the outside. The entire 13 image is in the same focus. 14 If Mr. Hess is claiming it's not in 15 focus enough, that has to do with the entire image 16 and it's the image he himself took and is supposed to 17 set the photos of. The entire purpose of the analysis 18 is to distinguish talc from chrysotile. This is 19 literally the same question, it may have been a 20 different particle, that we asked Dr. Longo. What is 21 that particle over there? And he said, I would have 22 to be looking down the microscope. 23 We asked him, well, is it talc or is it 24 chrysotile? He said, I would have to look down the 25 microscope.</p>

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<p style="text-align: right;">Page 66</p> <p>1 Now we ask the person looking down the 2 microscope, what are these particles, and now we're 3 being told, well, he can't answer that question 4 either.</p> <p>5 So who is the person that we're 6 supposed to ask why the talc particles look identical 7 to the chrysotile particles? If he can't answer the 8 question, then let him testify he can't answer the 9 question. And then we'll go back and forth on this, 10 are the photographs good enough, are they documented 11 enough, are they claiming that you need to look down 12 the microscope.</p> <p>13 If he can't answer, then let the person 14 with 40 years of PLM experience, who all of the PLM 15 testing relies on, who made all the key decisions say 16 I can't answer that question. But that's not for 17 them to object and say, well, it's too out of focus 18 for him to answer. If he can't answer that question, 19 then he needs to testify to that.</p> <p>20 MS. O'DELL: Well, he said, I would not 21 give it the same. He said that twice. But anyway.</p> <p>22 MR. BUSH: Right. And so what color is 23 it? What color is he calling talc particles? We 24 don't know. They look yellow to me, just like all 25 the other particles, we put a number of examples in</p>	<p style="text-align: right;">Page 67</p> <p>1 them.</p> <p>2 We want to know how is he able, if he 3 looks at a field of particles, they're all yellow, he 4 picks out one and says that one is chrysotile and the 5 others aren't. We want to know, how in the world is 6 he making that distinction between what is chrysotile 7 and what is talc? It is the fundamental basis of the 8 entire analysis that he's looking down the microscope 9 to look at and that Dr. Longo is saying that the only 10 way to make that determination is to look down the 11 microscope. This is just "the" "the" central 12 question at issue in this case-defining issue, is why 13 are you calling out some yellows as talc and some 14 yellows as chrysotile?</p> <p>15 It's just -- it is fundamentally what 16 this is all about.</p> <p>17 MR. LUDWIG: And I think that question, 18 though, your Honor, not to step on Ms. O'Dell's toes, 19 but I think if you go back to page 144, I think 20 that's where -- he's never asked how he does that, 21 but 144 to 147 it goes a little bit to fibrosity, and 22 if I recall this question, I hope I remember it 23 correctly, Mr. Dubin is sort of cherry picking 24 something off the image and we made our objection 25 based on that. I think it was sort of, once again,</p>
<p style="text-align: right;">Page 68</p> <p>1 asking about a specific particle that was not part of 2 the actual analysis on that image. That's the reason 3 why we made that objection. And I mean --</p> <p>4 MR. BUSH: He's looking at all these 5 particles and he's saying that one I'm not going to 6 call chrysotile. This one I am. And he's picking 7 that one to call chrysotile. There is just no 8 fundamental way to do that analysis without looking 9 at all the other particles and deciding that those 10 are not asbestos.</p> <p>11 And so this is -- this is the heart of 12 what looking down the microscope and making the 13 decisions is doing. All the key decisions that we 14 argued and your Honor's order says he's making.</p> <p>15 SPECIAL MASTER SCHNEIDER: I got it.</p> <p>16 The next one I have is number 23, page 17 125:21.</p> <p>18 Matt, what is the significance of this 19 roundness plate that you ask about?</p> <p>20 MR. BUSH: This is the same issue.</p> <p>21 All we're trying to do here is direct 22 his attention to a particle, and we don't even get a 23 chance to do that because he was instructed not to 24 answer the question: Do you see that?</p> <p>25 All this question was trying to do was</p>	<p style="text-align: right;">Page 69</p> <p>1 saying, are we on the same page of what particle I 2 want to ask you questions about.</p> <p>3 SPECIAL MASTER SCHNEIDER: So do you 4 want to know does Hess see a rounded plate?</p> <p>5 MR. BUSH: No. We want to know, are 6 you following me with what particle I want to ask you 7 a question about. Are we on the same page that when 8 I want to ask you follow-up questions about a 9 particle, are you and I -- I just want to make sure 10 we're talking about the same one. That's all that's 11 happening.</p> <p>12 And I can show you exactly, because we 13 have this in our brief, there is not really -- right, 14 so we're here. And the question is, if you look at 15 the top of the two arrows, which is here, and then 16 you move your eye over to the left, there is a 17 rounded talc plate. This particle, rounded, talc 18 plate. Do you see what I'm talking about so that I 19 can ask you further questions about that particle?</p> <p>20 And we're instructed not to answer 21 that. Even that question he was instructed not to 22 answer.</p> <p>23 MS. O'DELL: Your Honor, and then it 24 goes on on page 126, starting at line 23, and down to 25 127, line 11.</p>

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<p>1 He's actually asked about the 2 chrysotile particle that is being reported in the 3 image. And he's asked about refracted indices and do 4 you know what color. And he responds to that 5 question truthfully. And he says: In that sense, I 6 don't recall the specific color. 7 And then he goes on, he's asked other 8 questions. 9 And I guess the two things I would say 10 about it, your Honor, is number one, this is a small 11 portion of a larger photomicrograph that's presented 12 in a report. That's one thing. 13 And number two is, when he was asked 14 questions about his chrysotile finding, to my -- 15 after review of the deposition again, I found no 16 instance where it was a report at issue in this case 17 where Mr. Hess did not respond to those questions 18 about those particles that he specifically was 19 reporting were chrysotile. 20 MR. BUSH: So the question at issue 21 this time is about a talc particle. So we move on to 22 other questions that happen later about chrysotile 23 are irrelevant to this question. 24 The question was: Do you see what 25 particle I'm looking at because I want to ask you</p>	<p>1 questions about it. 2 And he was instructed not to answer, so 3 we couldn't ask more follow-up questions about that 4 particle. 5 So this is just -- it's all the same 6 arguments I just made. It's an image in his report. 7 The snippets I put in the brief are because we 8 couldn't put full page images in the brief with our 9 page limit. 10 To make sure we cured all the 11 Plaintiffs' objections, we attached as exhibits the 12 full reports that were always at issue and directed 13 them to what page number the reports were coming 14 from. So they had all -- this objection that, well, 15 these were just snippets or that they weren't in 16 focus, right, they had all the images that they 17 themselves produced and they were all marked as 18 exhibits to the deposition. And all the ones at 19 issue are exhibits to this brief, to our motions, so 20 that you can see them. 21 This was just, can you see the particle 22 so I can ask you questions about that. I do not 23 understand how that is possibly an instruction not to 24 answer that question. It's barely even asking him a 25 question yet.</p>
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<p>1 MS. O'DELL: Your Honor, I would just 2 say, I have no doubt that they attached the reports 3 to any briefing, but for purposes of the deposition, 4 there are many instances where Mr. Hess only had a 5 created image, a created PowerPoint, or a smaller 6 portion of a photomicrograph. And that's -- I would 7 argue that that's not an appropriate way to examine a 8 witness. 9 SPECIAL MASTER SCHNEIDER: Number 25. 10 Matt, what's the question that's objected to? 11 MR. BUSH: Number 25 is page 126, line 12 8? 13 SPECIAL MASTER SCHNEIDER: 128:3. 14 MR. BUSH: Oh, 128:3. 15 So the question is, if you get -- it's 16 on page 17 of the exhibit. So it's lines 21 to 22. 17 You might need to read up a little to 18 get the context, but the question is: The same type 19 of purple or red colors that are on the talc plates. 20 So if you look up, he's saying: You're 21 calling the edge that you saw purple and magenta, 22 right? So the edge where you're claiming, Mr. Hess, 23 is that there is an edge around the chrysotile 24 particle that's purple or magenta, right? 25 Yes, that's correct.</p>	<p>1 The same kind of purple or red colors 2 that are on the talc plates, that's the question that 3 was objected to. And that's exactly the one that we 4 highlighted in the brief and I highlighted in our 5 argument, which is when we asked Dr. Longo, well, 6 isn't this edge effect that you're claiming is the 7 basis for calling something chrysotile also on the 8 talc plates, he said, well, I'd have to look down the 9 microscope. And so when we asked nearly the 10 identical question to Mr. Hess, we're instructed not 11 to answer which prevents us from getting an answer to 12 that question from anybody. 13 SPECIAL MASTER SCHNEIDER: And to 14 clarify, is that one of the tests in tables one to 15 seven? 16 MR. BUSH: Yes, your Honor. It's the 17 Valadez Report. So this series of questions for a 18 little bit is all about that report. 19 SPECIAL MASTER SCHNEIDER: Okay. Next 20 is 26, 129:10. 21 Again, Matt, what's the question? 22 MR. BUSH: Lines 18 to 22. Without 23 those edges, without those sort of red colors at the 24 edges, then the CSDS color that you would have had to 25 assign the particle would correspond to yellow,</p>

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<p style="text-align: right;">Page 74</p> <p>1 right?</p> <p>2 SPECIAL MASTER SCHNEIDER: And this is</p> <p>3 referring to the same test as the previous objection?</p> <p>4 MR. BUSH: Yes, your Honor.</p> <p>5 In the brief, we -- in our motion, we</p> <p>6 connect every single one to the exact image that's</p> <p>7 being looked at. But this is one of the images in</p> <p>8 the Valadez Report, which is in tables one through</p> <p>9 seven, sample M71614.</p> <p>10 MS. O'DELL: And, your Honor, on page</p> <p>11 130 it continues.</p> <p>12 He says: How can you tell whether or</p> <p>13 not the red that you're seeing on the edges is an</p> <p>14 artifact of focus?</p> <p>15 And then he answers: By assuring that</p> <p>16 my particle is in focus.</p> <p>17 And so he does go on to comment about</p> <p>18 that.</p> <p>19 And then he's asked additional</p> <p>20 questions.</p> <p>21 MR. BUSH: And that's a different</p> <p>22 question. He was instructed not to answer one</p> <p>23 question, and he answered a different question.</p> <p>24 MS. O'DELL: But if the follow-up</p> <p>25 question goes to the substance of what was being</p>	<p style="text-align: right;">Page 75</p> <p>1 asked, your Honor, I would argue that there is no</p> <p>2 prejudice.</p> <p>3 MR. BUSH: That's just not how a</p> <p>4 deposition -- they don't get to pick and choose the</p> <p>5 way we ask the questions.</p> <p>6 The question is: If you don't have the</p> <p>7 edge effect, what color is left? Is it yellow? If</p> <p>8 you weren't relying on the edges, would this be a</p> <p>9 yellow color?</p> <p>10 We're entitled to get that question.</p> <p>11 It still goes to the heart of what he's</p> <p>12 seeing.</p> <p>13 MS. O'DELL: It --</p> <p>14 SPECIAL MASTER SCHNEIDER: Next is my</p> <p>15 27, page 136:5.</p> <p>16 Is the Valadez Report part of what's at</p> <p>17 issue?</p> <p>18 MR. BUSH: It's still the same one, the</p> <p>19 same sample number I just read off.</p> <p>20 SPECIAL MASTER SCHNEIDER: Okay.</p> <p>21 I'm skipping ahead to my number 31,</p> <p>22 which is page 143, lines 11 to 25.</p> <p>23 What is the question, Matt?</p> <p>24 MR. BUSH: The question is: The same</p> <p>25 types of edge effects that you are relying on to call</p>
<p style="text-align: right;">Page 76</p> <p>1 particles chrysotile in Johnson & Johnson are also</p> <p>2 present in the talc plates in your analysis, is that</p> <p>3 true?</p> <p>4 SPECIAL MASTER SCHNEIDER: Help me</p> <p>5 again. What's referred to as the talc plates? What</p> <p>6 is --</p> <p>7 MR. BUSH: So, your Honor, the reason</p> <p>8 they call it a talc plate is because it's shaped like</p> <p>9 a plate. Like that's why -- talc particles --</p> <p>10 imagine a talc particle like a pancake. So a talc</p> <p>11 particle is often going to be circular.</p> <p>12 Sometimes, even if you're looking at</p> <p>13 something -- this isn't a circle, your Honor, so it's</p> <p>14 not the best example, but even if you're looking at</p> <p>15 something flat, if you look at it this way, it looks</p> <p>16 long and thin. The other thing that can happen with</p> <p>17 a talc particle is even though it's flat, it can get</p> <p>18 rolled up so it ends up looking like this. And so</p> <p>19 it's not flat.</p> <p>20 But a talc template plate is what --</p> <p>21 when it looks like a flat, big circle, that's how you</p> <p>22 know it's a talc plate.</p> <p>23 SPECIAL MASTER SCHNEIDER: In this</p> <p>24 question, are you referring to a specific test at</p> <p>25 issue?</p>	<p style="text-align: right;">Page 77</p> <p>1 MR. BUSH: I believe this is the one</p> <p>2 that -- this is the same Valadez Report, your Honor,</p> <p>3 but it's the same issue which is they're relying on</p> <p>4 the edge effects for all these reports that are at</p> <p>5 issue in this test. That's what we're referring to.</p> <p>6 The only time they're relying on edge</p> <p>7 effects is in the testing at issue in this MDL. The</p> <p>8 only time. The question inherently is only about the</p> <p>9 testing at issue in this report, in Dr. Longo's</p> <p>10 report.</p> <p>11 MS. O'DELL: And I think -- I'm not</p> <p>12 sure what Mr. Bush is talking about, because there is</p> <p>13 chrysotile testing that Dr. Longo has done that's</p> <p>14 outside the reports in this MDL. So I'm not sure</p> <p>15 exactly what was being said there.</p> <p>16 But we were shown -- or Mr. Hess was</p> <p>17 shown exhibit -- what I believe to be 21. And it was</p> <p>18 not clear, the context. And that's what I said.</p> <p>19 He says: I've tried to ask you this</p> <p>20 already, Mr. Hess, but the same type of edge effects</p> <p>21 that you're relying on to call talc -- call particles</p> <p>22 chrysotile in Johnson & Johnson are also present on</p> <p>23 talc plates in your analysis, is that true?</p> <p>24 And just based on our prior objections</p> <p>25 regarding these on-the-fly analyses of talc, I</p>

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<p style="text-align: right;">Page 78</p> <p>1 instructed him not to answer.</p> <p>2 And we got this exhibit, your Honor.</p> <p>3 It wasn't clear what it was from at that point. And</p> <p>4 this is what was put on the screen. And I made an</p> <p>5 objection because -- and I said I don't know what</p> <p>6 particles are being depicted from who knows what.</p> <p>7 It's misleading and not representative of what's</p> <p>8 actually in the reports.</p> <p>9 And so Exhibit 22 appears to be the</p> <p>10 entire report, but actually what was on the screen</p> <p>11 was not everything. It was just an image. And I</p> <p>12 made an objection on that basis and instructed him</p> <p>13 not to answer.</p> <p>14 MR. BUSH: Your Honor, exhibit -- let's</p> <p>15 pull up the exhibits. I have them right here.</p> <p>16 Exhibit --</p> <p>17 MS. O'DELL: And just let me be clear,</p> <p>18 Matt, because that's what I just said. The exhibit</p> <p>19 was the entire report. That was not what was on the</p> <p>20 screen. What was on the screen was this</p> <p>21 photomicrograph that wasn't clear where it was from</p> <p>22 or what the page of the report was and what was being</p> <p>23 asked.</p> <p>24 And I can say with confidence to the</p> <p>25 Court, I was very vigilant that if they were asking</p>	<p style="text-align: right;">Page 79</p> <p>1 about a report, I wanted to know what report and what</p> <p>2 page. So I, for one thing, could pull it up and</p> <p>3 ensure that we had a context for what was being</p> <p>4 asked.</p> <p>5 And in this instance, it's not terribly</p> <p>6 clear on the record, but I will represent to the</p> <p>7 Court there was an image pulled up, we were not clear</p> <p>8 where it was from, what was being asked, and I</p> <p>9 instructed him not to answer.</p> <p>10 SPECIAL MASTER SCHNEIDER: All right.</p> <p>11 MR. BUSH: I want to say for the</p> <p>12 record, here is Exhibit 21. Exhibit 21 is the</p> <p>13 Valadez Report, M71614. Same one that I've been</p> <p>14 referring to that is in the tables in Dr. Longo's</p> <p>15 report, table six, row 41.</p> <p>16 Exhibit 22 moved on to a totally</p> <p>17 different topic, which is about where buttons are on</p> <p>18 the microscope.</p> <p>19 This is Exhibit 22 that I'm showing</p> <p>20 you.</p> <p>21 The question is inherently about the</p> <p>22 testing that he's doing at issue in the MDL. That's</p> <p>23 what we wanted to ask about. We're not trying to ask</p> <p>24 a whole bunch of questions about other sorts of</p> <p>25 things. Every question went to and was relevant to</p>
<p style="text-align: right;">Page 80</p> <p>1 the testing at issue in these reports.</p> <p>2 SPECIAL MASTER SCHNEIDER: All right.</p> <p>3 I only have one or two more.</p> <p>4 My number 36 is page 159, 15 to 25.</p> <p>5 What is Calidria?</p> <p>6 MR. BUSH: Okay. You said 159:15 to</p> <p>7 25?</p> <p>8 SPECIAL MASTER SCHNEIDER: Correct.</p> <p>9 MR. BUSH: Okay.</p> <p>10 Calidria is a unique kind of chrysotile</p> <p>11 asbestos that is part of Dr. Longo's testing and at</p> <p>12 issue in this report.</p> <p>13 So this is how it goes down. Dr. Longo</p> <p>14 has testified that what was critical in order for his</p> <p>15 analysts or analyst, Mr. Hess, to finding chrysotile</p> <p>16 and being able to differentiate it from talc is this</p> <p>17 Calidria reference sample. Calidria is a unique form</p> <p>18 of chrysotile.</p> <p>19 What they did was MAS took Calidria,</p> <p>20 took a sample. Mr. Hess looked at the sample under a</p> <p>21 PLM microscope and took images of it. And then what</p> <p>22 Dr. Longo has testified is that comparing the</p> <p>23 Calidria reference sample to the chrysotile, what</p> <p>24 they're claiming is chrysotile in Johnson & Johnson</p> <p>25 talc, was the key step in order to differen -- in</p>	<p style="text-align: right;">Page 81</p> <p>1 order for them to understand why they're finding</p> <p>2 chrysotile. And that the only reason that all the</p> <p>3 labs everywhere else in the country is not finding</p> <p>4 chrysotile is because of this reference sample.</p> <p>5 Now, what the Plaintiffs are going to</p> <p>6 say is this wasn't produced in this MDL. But Dr.</p> <p>7 Longo has testified that this was the key step that</p> <p>8 they are relying on for all this testing that's at</p> <p>9 issue in this MDL.</p> <p>10 So I don't think they can really say</p> <p>11 this is not -- this isn't an issue in the MDL because</p> <p>12 it is the critical step, according to Dr. Longo, for</p> <p>13 differentiating talc from asbestos, is looking at</p> <p>14 this reference sample that MAS created and that Mr.</p> <p>15 Hess took an image of.</p> <p>16 SPECIAL MASTER SCHNEIDER: So did you</p> <p>17 question Dr. Longo about this issue?</p> <p>18 MR. BUSH: We have questioned Dr. Longo</p> <p>19 about the reference sample, but Mr. -- and he says</p> <p>20 the critical step is to compare the chrysotile</p> <p>21 reference and sample that they created and the -- and</p> <p>22 what they're claiming to find is chrysotile.</p> <p>23 And when we asked him questions, I</p> <p>24 think there is one that we might have skipped over,</p> <p>25 your Honor, which is, are you really calling these</p>

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<p style="text-align: right;">Page 82</p> <p>1 same things -- are you really saying that the 2 chrysotile in your reference sample is the same color 3 as what you're claiming is chrysotile in talc, we 4 were instructed not to answer.</p> <p>5 I also want to say, your Honor, this 6 was at issue in the original briefing on the motion 7 to compel Hess' testimony. Mr. Hess -- Dr. Longo 8 testified that Mr. Hess is the one who came up with 9 the idea of using a chrysotile -- a Calidria 10 reference sample.</p> <p>11 So Mr. Hess comes up with the idea to 12 use the reference sample. Then it forms a critical 13 component of their analysis. The component is, 14 compare what I claim is chrysotile to what we are 15 saying is Calidria in this reference sample, that 16 that's what you have to do for the analysis.</p> <p>17 Mr. Hess looks down the microscope, 18 takes a picture of Calidria. He looks down the 19 microscope, takes a picture himself of what he's 20 calling chrysotile, and then Dr. Longo says a key 21 component of the analysis is comparing those two 22 things.</p> <p>23 All of this -- it was Mr. Hess' idea 24 and Mr. Hess' execution, and what Dr. Longo says is a 25 critical step of -- a necessary step to the analysis.</p>	<p style="text-align: right;">Page 83</p> <p>1 So all of this is totally directly relevant, not just 2 to the testing at issue in this MDL, but to Mr. Hess 3 in particular who's the one who came up with this 4 idea.</p> <p>5 SPECIAL MASTER SCHNEIDER: So when you 6 asked Longo about this idea, did he not answer the 7 question? Or he deferred completely and wholly to 8 Mr. Hess?</p> <p>9 MR. BUSH: Your Honor, I can't recall 10 every time like we've asked him about the Calidria 11 reference sample and what he said. What he said is 12 that this is critical and that Mr. Hess is the one 13 who came up with the idea. And so Mr. Hess is the 14 one looking down the microscope and taking all these 15 images. So this is directly at issue to what is -- 16 to what Mr. Hess is doing.</p> <p>17 MS. O'DELL: Your Honor, if I could 18 just cite very briefly.</p> <p>19 On page 158, lines two through four, 20 Mr. Hess testifies that it was a collaboration 21 between he and Dr. Longo to identify Calidria as a 22 reference. He testified to that. He was asked on 23 page 159, 11 through 14: No question if I look at 24 Calidria in 1.550, I can see generally a magenta in 25 parallel and blue in perpendicular, right?</p>
<p style="text-align: right;">Page 84</p> <p>1 Answer: I have seen that in my 2 experience.</p> <p>3 He answered the question.</p> <p>4 But this is the objectionable question.</p> <p>5 Because Mr. Dubin goes on to say: So how is it in 6 your view that somehow Calidria is also showing gold 7 and yellow?</p> <p>8 He sort of leaves that question and he 9 says: What property of physics changes it so 10 sometimes when you're finding it, it's to your golden 11 yellow as opposed to magenta?</p> <p>12 That was an objectionable question.</p> <p>13 He's not there to talk about physics. He answered a 14 question about what he's seen in his experience and 15 to go beyond that, they're seeking expert opinion.</p> <p>16 And that was the instruction not to answer.</p> <p>17 MR. BUSH: Your Honor, I want to show 18 you the image.</p> <p>19 This is the chrysotile reference 20 sample. What Mr. Hess acknowledged is that all this 21 blue around here is chrysotile. Then they pick as 22 their reference this one yellow-looking thing. And 23 the question is: Why is he doing it and is that 24 really chrysotile?</p> <p>25 The only way it serves as an asbestos</p>	<p style="text-align: right;">Page 85</p> <p>1 reference sample is if it's actually asbestos. And 2 there is a lot of evidence that this particular 3 outlier particle they picked is not asbestos.</p> <p>4 For example, are there impurities in 5 chrysotile samples and Calidria samples? There are.</p> <p>6 He was instructed not to answer that question even 7 though he came up with the whole idea for this.</p> <p>8 So then the question is: Okay. If all 9 this is blue and all this is chrysotile, why did you 10 pick this one? You're saying that chrysotile changes 11 color, but even though it's always blue, somehow it 12 changes to yellow and we're going to pick just the 13 yellow one. How is that even possible that that 14 happens? All this relates to the standard he 15 created. So if he doesn't know about impurities in 16 the sample or how the colors change, he's using it as 17 a reference for the color and it was his idea. So if 18 he doesn't know how these colors match up to actual 19 chrysotile, then it can't serve as a reference 20 standard. This is all his idea.</p> <p>21 And this concept that he can't possibly 22 talk about it because it's about his expert opinion, 23 he came up with this idea and he's the one 24 implementing this idea. So all the questions are 25 directly relevant to Mr. Hess' work that's at issue</p>

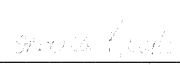

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<p style="text-align: right;">Page 86</p> <p>1 in this MDL.</p> <p>2 SPECIAL MASTER SCHNEIDER: Okay. This</p> <p>3 is my last question. What I call number 39, page</p> <p>4 174:2.</p> <p>5 Matt, what's the question?</p> <p>6 MR. BUSH: Well, what the question ends</p> <p>7 up being is just -- there doesn't end up being a</p> <p>8 question. It's just about this entire reference</p> <p>9 sample.</p> <p>10 So if you look at line -- it's on page</p> <p>11 24 of the exhibit, lines 10 to 14. So it looks like</p> <p>12 it's page 175 at this point.</p> <p>13 Are you claiming that you're going to</p> <p>14 stop Mr. Hess -- this person, Mr. Hess, from talking</p> <p>15 about the references to images for alleged chrysotile</p> <p>16 in Johnson & Johnson? If so instruct him and let's</p> <p>17 have it at that.</p> <p>18 So the question is just: Are you</p> <p>19 instructing him not to answer anything about this</p> <p>20 reference sample?</p> <p>21 SPECIAL MASTER SCHNEIDER: I think you</p> <p>22 explained it before. Can you explain again what a</p> <p>23 reference sample is?</p> <p>24 MR. BUSH: Right.</p> <p>25 So one way it helps you know whether</p>	<p style="text-align: right;">Page 87</p> <p>1 what you're looking -- you want to know if what</p> <p>2 you're looking at is talc or asbestos. So one thing</p> <p>3 you can do is look at an image of known talc or an</p> <p>4 image of known asbestos. If the particle looks like</p> <p>5 a known talc particle, that's going to show it's</p> <p>6 talc. If the particle looks like a known asbestos</p> <p>7 particle, then you know it's asbestos.</p> <p>8 What Dr. Longo has said is that normal</p> <p>9 chrysotile doesn't look like the chrysotile we're</p> <p>10 finding. So Mr. Hess came up with this idea of let's</p> <p>11 use a reference sample for this unique form of</p> <p>12 chrysotile called Calidria. And they're claiming</p> <p>13 that this reference sample unlocked their ability to</p> <p>14 differentiate talc from chrysotile because it gave</p> <p>15 them a reference, a point of comparison to look at.</p> <p>16 And one of the big problems with this</p> <p>17 is, is it actually a known asbestos particle or is it</p> <p>18 an impurity in the sample? And one of the reasons</p> <p>19 that that is -- raises a lot of eyebrows is why did</p> <p>20 they pick, of the hundreds of particles that are blue</p> <p>21 in this image, why did they pick the one yellowish</p> <p>22 particle and are they sure that it's really asbestos?</p> <p>23 And if Mr. Hess came up with the idea</p> <p>24 and it's implementing the idea, then he should be</p> <p>25 able to answer these questions.</p>
<p style="text-align: right;">Page 88</p> <p>1 MS. O'DELL: And, your Honor, I started</p> <p>2 the objection. It was -- the exhibit was introduced</p> <p>3 on page 69. It was put up. And I said to Mr. Dubin:</p> <p>4 What report did this image come from? So we could</p> <p>5 have some kind of context. And we never got an</p> <p>6 answer. They said it's a reference image that he's</p> <p>7 been using to compare.</p> <p>8 And I said: But this is not an image</p> <p>9 that's been produced in the MDL in relation to Dr.</p> <p>10 Longo's testimony.</p> <p>11 I go on to ask where it came from. And</p> <p>12 that he's been asked images -- I don't know where</p> <p>13 it's from, what the context is, and it never arose in</p> <p>14 the two-day deposition with Dr. Longo.</p> <p>15 And so --</p> <p>16 MR. BUSH: And --</p> <p>17 MS. O'DELL: Just if I can finish.</p> <p>18 So if this has been an issue in some</p> <p>19 other case, I don't have any information about that.</p> <p>20 And that was one of the bases for the objection.</p> <p>21 And so if you read through the</p> <p>22 objections, your Honor, page 174 and 175, that was</p> <p>23 really what was at issue.</p> <p>24 MR. BUSH: Your Honor, this doesn't</p> <p>25 come -- this image did not come originally attached</p>	<p style="text-align: right;">Page 89</p> <p>1 to a report.</p> <p>2 In the Valadez case he said he -- in</p> <p>3 the Valadez Report, the one at issue in this MDL, he</p> <p>4 said he used a Calidria reference sample. And we</p> <p>5 said, hey, you didn't actually produce the images of</p> <p>6 your sample. So they produced them independently,</p> <p>7 they just said, here is the three or four images that</p> <p>8 we're using for the reference sample. So it didn't</p> <p>9 come -- it wasn't originally attached to any report</p> <p>10 because we had to go seek it out and ask for it.</p> <p>11 Dr. Longo has testified this is the key</p> <p>12 that unlocks their ability to identifying chrysotile</p> <p>13 in this testing. The fact that he said it in another</p> <p>14 case doesn't make it any less true in this case</p> <p>15 because it's the same testing that's at issue.</p> <p>16 So this is the critical step that he's</p> <p>17 relying on and that Mr. Hess is supposed to do.</p> <p>18 We cited it in the reply brief, we</p> <p>19 cited it in our motion, we cited it in the motion</p> <p>20 last time that he said the reason that no other lab</p> <p>21 in the country is able to identify chrysotile is</p> <p>22 because they don't have this sheet, this reference</p> <p>23 sample, and he testified that an analyst would not be</p> <p>24 able to identify chrysotile without this reference</p> <p>25 sample. So the reference sample is a necessary</p>

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<p style="text-align: right;">Page 90</p> <p>1 component of the testing at issue in this MDL.</p> <p>2 MS. O'DELL: Your Honor --</p> <p>3 SPECIAL MASTER SCHNEIDER: It's your</p> <p>4 motion, you'll have the last word, Matt.</p> <p>5 Leigh, do you want to add anything?</p> <p>6 The floor is yours. Anything you want to add to the</p> <p>7 extent it hasn't already been mentioned?</p> <p>8 MS. O'DELL: Your Honor, I think we've</p> <p>9 covered it at length.</p> <p>10 I would just say that the effort of</p> <p>11 counsel for Plaintiffs' Steering Committee was to</p> <p>12 make sure that the deposition proceeded in a way that</p> <p>13 was not obstructed, but was consistent with the</p> <p>14 Court's ruling.</p> <p>15 SPECIAL MASTER SCHNEIDER: Matt, last</p> <p>16 word.</p> <p>17 MR. BUSH: My last word, your Honor,</p> <p>18 I'm going to just say it again, which is every single</p> <p>19 question that was asked went to the how and the why</p> <p>20 of the testing Mr. Hess did. There was no question</p> <p>21 that was off on a tangent to try to sneak in some</p> <p>22 questions about some other case. Every question was</p> <p>23 relevant to the how and the why of the testing that</p> <p>24 your Honor's opinion said could be covered. And I</p> <p>25 haven't heard anything from Plaintiffs disputing</p>	<p style="text-align: right;">Page 91</p> <p>1 that. Every question we asked was relevant and we</p> <p>2 did it for a reason and it was all relevant to this</p> <p>3 PLM testing. We weren't there to waste time, we</p> <p>4 certainly weren't there to harass him. We were there</p> <p>5 to ask questions relevant to this PLM test that's at</p> <p>6 issue. And every single question was relevant to the</p> <p>7 PLM tests that were at issue in this MDL.</p> <p>8 SPECIAL MASTER SCHNEIDER: Thank you,</p> <p>9 Counsel.</p> <p>10 The record is closed on this motion.</p> <p>11 You'll get the ruling promptly and I</p> <p>12 thank you, as usual, for your excellent work product.</p> <p>13 And have a good night. Thank you.</p> <p>14 MS. O'DELL: Thank you, your Honor.</p> <p>15 (Hearing Adjourned)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 92</p> <p>1 CERTIFICATE</p> <p>2</p> <p>3 I, Theresa Mastroianni Kugler, a Notary Public</p> <p>4 and Certified Court Reporter of the State of New</p> <p>5 Jersey, do hereby certify that the foregoing is a</p> <p>6 true and accurate transcript of the testimony as</p> <p>7 taken stenographically by and before me at the time,</p> <p>8 place, and on the date hereinbefore set forth.</p> <p>9</p> <p>10 I DO FURTHER CERTIFY that I am neither a</p> <p>11 relative nor employee nor attorney nor counsel of any</p> <p>12 of the parties to this action, and that I am neither</p> <p>13 a relative nor employee of such attorney or counsel,</p> <p>14 and that I am not financially interested in the</p> <p>15 action.</p> <p>16</p> <p>17</p> <p>18 </p> <p>19</p> <p>20 Theresa Mastroianni Kugler,</p> <p>21 Certified Court Reporter</p> <p>22 Certificate No. XI0857</p> <p>23 Notary Public, State of New Jersey</p> <p>24 Commission Expires July 11, 2026</p> <p>25 Commission No. 2410394</p> <p>Date: August 7, 2024</p> 	

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